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VIA EMAIL California.Jobs@opr.ca.gov
Scott.Morgan@opr.ca.gov

Governor's Office of Planning and Research
State Clearing House
Scott Morgan, Director
1400 Tenth Street, Room 117
Sacramento, CA 95814

Re: Objections to ELDP Application by MCAF Vine, LLC
State Clearing House Tracking No. 2018051002; Hollywood Center Project

Dear Director Morgan:

Please accept these objections to the Environmental Leadership Development Project ("ELDP") application submitted by developer MCAF Vine, LLC for the "Hollywood Center Project" in Hollywood.

Since 2013, we have represented petitioners who successfully opposed a previous iteration of the project when it was called the Millennium Hollywood project. On April 30, 2015, we obtained a writ of mandate on multiple grounds invalidating the Los Angeles City Council's approvals of the prior project. (**Exhibit 1** [April 30, 2015 ruling by the Hon. James C. Chalfant].)

The prior project also faced grave concerns from two State agencies: the California Geological Survey and Caltrans. Both 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 (**Exhibit 2**, official map and State Fault Evaluation Report 253 and supplement ["FER 253]"), and because of deleterious impacts on the State Highway System, specifically the 101 Freeway's mainline and ramps. (**Exhibit 3**, Caltrans' repeated objection letters.)

Those concerns are even more well founded today given the current iteration of the project, which is basically the prior project, but more offensive. The current proposal would place even larger skyscrapers astride and adjacent to the earthquake fault. (See **Exhibit 4**, State-mapped Hollywood Earthquake Fault superimposed onto the developer's new site plan showing eastern skyscraper bisected by the earthquake fault, and further showing the ignoring of the required 50-foot setback areas with major portions of building footprints within 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. Millennium did not appeal, which means it failed to exhaust its administrative remedies in seeking to argue for the active fault designation through the site to be changed. Accordingly, Millennium forfeited any ability to challenge that identification. Therefore, 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 final by all offices of the State, including as part of this ELDP process.

The developer, Millennium Partners, aka MCAF Vine, LLC, is also the same developer responsible for the Leaning Tower of San Francisco debacle. That travesty has been exhaustively exposed by the New York Times, The Wall Street Journal, and CBS TV's "60 Minutes." That alone should cause significant pause in your review of the ELDP application.

But it is the physical dangers presented by this latest project – which would imperil the lives of thousands who would live, work in and visit the site daily – that should render the ELDP application *void ab initio*.

By asking the State of California to grant the extraordinary financial benefits and legal privileges that ELDP status would confer – and in flagrant disregard of the State's official Alquist-Priolo Map – the applicant should instead be granted the *chutzpah* award. "[I]f this were the Federal Circuit, [the Millennium developer] would qualify for a 'chutzpah award.' [Citation.]" Thayer v. Wells Fargo Bank (2001) 92 Cal.App.4th 819, 845, citing Checkpoint Systems v. U.S. Intern. Trade Com'n (Fed.Cir. 1995) 54 F.3d 756, 763, fn. 7 (noting "chutzpah" describes "the behavior of a person who kills his parents and pleads for the court's mercy on the ground of being an orphan").

We respectfully submit that your review of Millennium's application should include soliciting the empirical input from the California Geological Survey and Caltrans. Please seek the opinions of your own expert agencies in reviewing this ELDP application.

Although certain special projects could be appropriate for ELDP status, this project does not merit such status. Rather, to grant ELDP status here would discredit the integrity of the process and sully the otherwise understandable goals of the ELDP program.

If the developer actually moves forward with the project following its prior legal defeat, it should be required to do so with no special privileges, i.e., within the standard legal framework. It should be subjected to the fullest measure of transparency and the public's right to participate. As Justice Brandeis observed, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Buckley v. Valeo (1976) 424 U.S. 1, 67, quoting L. Brandeis, *Other People's Money*, 62, National Home Library Foundation, ed. 1933.) In this situation and with this developer, more light is needed, not less.

Just as Millennium in San Francisco grossly misrepresented its building safety and geological work (see, e.g., **Exhibit 5** [one of a number of lawsuits currently pending against the Millennium developer for fraudulent misrepresentation, fraud in the inducement, and other wrongful acts] & **Exhibit 6** [San Francisco City Attorney Dennis Herrera's September 20, 2016 cover letter to Millennium and its principal, Chris Jeffries, with administrative subpoena]), it has repeatedly made false and misleading statements about the alleged lack of an active earthquake fault through the Hollywood site – all in contravention of the State's Alquist-Priolo Map.

In that regard, we have learned that some Los Angeles City officials and project proponents are claiming that Judge Chalfant found there was no earthquake fault on the site. That is incorrect. To the contrary, in response to our 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. But he also found them inadmissible in the prior writ of mandamus case because "they did not exist at the time of the [City's] approval." (**Exhibit 1**, p. 11.) However, the Map and FER 253 Study most certainly exist now, and cannot be avoided.

Similarly, the Millennium developer's paid-for study claiming that no active fault crosses the site does not overcome the State's official conclusions and mapping in the final Alquist-Priolo Map. Indeed, as noted above, the Millennium developer waived any ability to challenge the State's conclusive finding of the 7.0 magnitude active Hollywood Earthquake Fault running through the site by the developer's failure to exhaust the administrative appeal process provided as to that issue.

To conclude, this is neither a corporate citizen nor a project that should receive or is legally entitled to receive the enormous benefits (with attendant harms to the public's health, safety and due process rights) of ELDP status.

Thank you for your consideration of this letter and attached exhibits. Please contact us if we can provide any further information.

Very truly yours,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS:vl
Attachments

EXHIBIT 1

Modified

FILED
Superior Court of California
County of Los Angeles
APR 30 2015
Sherri R. Carter, Executive Officer/Clerk
By Annette Fajardo Deputy
Annette Fajardo

StopTheMilleniumHollywood.com, et al. v. City of Los Angeles, et al.
BS 144606

Tentative Decision on Petition for Writ of Mandamus: granted in part

Petitioners StopTheMillenniumHollywood.com, Communities United for Reasonable Development, Beachwood Canyon Neighborhood Association, and George Abrahams seek a writ of administrative mandamus setting aside the actions of Respondent City of Los Angeles ("City") in approving a large, mixed-use development in Hollywood ("Project"), its supporting Environmental Impact Report ("EIR"), and its land-use entitlements.[1]

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners StopTheMillenniumHollywood.com ("STMH"), Communities United for Reasonable Development ("CURD"), Beachwood Canyon Neighborhood Association ("BCNA"), and George Abrahams ("Abrahams") commenced the instant proceeding on August 28, 2013 alleging claims for mandamus, declaratory relief, and injunction.

On September 5, 2014, Petitioners filed a First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief ("FAP"), which is the operative pleading. The FAP alleges in pertinent part as follows.

1. Petitioners and Real Party-in-Interest

Petitioner StopTheMillenniumHollywood.com ("STMH") is an unincorporated association comprised of community organizations and individuals who participated in the administrative proceedings before the City. FAP, ¶7. Petitioner CURD is another unincorporated association of community organizations and individuals who jointly filed land use appeals during the administrative hearing process before the City Planning Commission and the City Council. Id., ¶8. Petitioner BCNA is a corporation representing property owners and residents living in the areas near Beachwood Canyon in or immediately adjacent to Hollywood and the site of the Project. Id., ¶9. BCNA is the parent organization of STMH and CURD. Id. Petitioner Abrahams is a director of BCNA. Id., ¶1 0.

Real Party-in-Interest Millennium Hollywood, LLC ("Millennium") is the business entity seeking to construct the Project.

2. Procedural Summary

A Draft EIR for the Project was released on October 25, 2012 and circulated for 45 days. FAP ¶25. A joint public hearing on the Project was held before a Deputy Advisory Agency and Hearing Officer (sometimes "DAA") on February 19, 2013. Id., ¶26. On February 22, 2013, the DAA approved the vesting tentative tract map ("VTTM") for the Project. Id., ¶27. The DAA also adopted a Statement of Overriding Considerations at the hearing. Id. On March 4, BCNA, represented by Abrahams, appealed the VTTM and Final EIR ("FEIR") approvals as to the City

[1]The court has separately ruled on the parties' several motions to augment the Administrative Record.

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Planning Commission ("Planning Commission"). Id., ¶28. The hearing on BCNA's appeal of the VTTM and FEIR, as well as consideration of the entitlements and development agreement took place on March 28, 2013. Id., ¶30. On April 27, 2013, the Planning Commission issued a determination approving the entitlements and EIR, and recommending a zone change and a height district ordinance change. Id., ¶35. The same day the Planning Commission issued another determination letter denying BCNA's appeal of the DAA determinations. Id., ¶36.

On May 7, 2013, CURD filed an appeal of the Planning Commission's approval of a zone change, height district change and associated actions. Id., ¶37. CURD also appealed the Planning Commission's decision from its appeal of the VTTM approval. Id., ¶38.

On May 24, 2013, the City issued a notice of land use appeal public hearing before the City Council's Planning and Land Use Management Committee ("PLUM"). Id., ¶43. The hearing was initially set for June 4, 2013. Id. CURD was among the organizations whose appeal was to be heard at this hearing. Id., ¶44. At the scheduled PLUM hearing on June 4, it was announced that the matter was being postponed June 18, 2013 at Millennium's request. Id., ¶44. It was also announced that the matter would be heard by the full City Council on June 19, 2013. Id.

At the June 18, 2013 PLUM hearing, it was announced that the City Council hearing scheduled for the following day was postponed to July 24, 2013. Id., ¶ 53. PLUM also voted to (1) approve the Project, subject modified conditions, (2) deny all appeals, and (3) adopt the Final EIR and "Statement of Overriding Considerations." Id., ¶56.

Prior to the July 24, 2013 City Council hearing, PLUM released a "Recommendation Report" relating the actions that it had taken on June 18, 2013. Id., ¶62. Petitioners allege that this report misrepresented the June 18, 2013 actions. Id. Specifically, the report referred to a different ordinance than the one discussed at the hearing. Id. PLUM essentially set their initial proposed ordinance aside and adopted a new one instead. Id., ¶64.

The City Council's hearing was held on July 24, 2013. ¶ 71. The day before the hearing, Millennium submitted a last-minute 311-page report attacking Petitioners' arguments. Id., ¶68. Petitioners were deprived of an opportunity to rebut Millennium's evidence. Id. At the conclusion of the City Council's hearing, the councilmembers voted unanimously to approve the Project. Id., ¶85.

3. The Causes of Action

The FAP's first three causes of action are for violation of CEQA. The First Cause of Action alleges that the City violated CEQA and the CEQA Guidelines by abusing its discretion in: (1) failing to provide an accurate, stable and finite project description; (2) failing to address comments raising significant environmental issue in good faith, with reasoned responses; (3) failing to adequately disclose, analyze, mitigate or avoid the Project's significant impacts on the environment, including emergency service response times, seismic risks and traffic impacts; (4) failing to re-circulate the Draft EIR when significant new (seismic) information was added late or was requested to be added even after FEIR certification; (5) failing to adequately disclose, analyze, mitigate or avoid the Project's land use impacts associated with each Los Angeles Municipal Code ("LAMC") provision overridden in favor of development regulations and/or land use equivalency programs; and (6) failing to adequately analyze the impact of the invalidation of the 2012 Hollywood Community Plan Update. Id., ¶123. Petitioners further allege that the City abused its discretion by concluding that certain impacts would be less than significant without substantial evidence in support thereof. Id., ¶128.

The Second Cause of Action alleges that in disregarding the concerns of Caltrans, a responsible agency under CEQA, the City violated Pub. Res. Code sections 21080.4(a) and 21092.4, and Guidelines section 15096(b)(2). Id., ¶144.

The Third Cause of Action alleges that by failing to notify and consult with the California Geologic Survey ("CGS"), a responsible agency under CEQA, the City violated Pub. Res. Code section 21153 and Guidelines section 15086(a)(1). Id., ¶151. Millennium and the City "colluded to suppress critical information regarding seismic hazards at the Millennium Project Site, including information indicating that traces of the active Hollywood Earthquake Fault bisect the property, and further including suppression from the EIR of the California Department of Conservation, California Geological Survey's 2010 Fault Activity Map, which indicates the presence of the active Hollywood Earthquake Fault running directly through the Millennium Property." Id., ¶153.

The Fourth Cause of Action is for violation of due process rights and deprivation of a fair hearing under the United States Constitution, the California Constitution, and CCP section 1094.5(b). Petitioners allege that the City's failure to attach the precise versions of the Millennium Hollywood Development Regulations and Millennium Hollywood Land Use Equivalency Program ("LUEP") deprived them of the ability to know from the four corners of the letters of determination precisely what the Planning Commission decided. Id., ¶158. When confronted with this deficiency, the City refused to cure the defect, making it impossible for Petitioners to track changes made by the City during the City Council hearing process because Petitioners could not verify what the operative versions of these zoning documents were. Id. The City Council's failure to develop and publish procedural rules to assure fair and consistent hearings violates Govt. Code section 65804. Id.

The Fifth Cause of Action is for declaratory and injunctive relief based on deprivation of fair hearings in land use appeals. Petitioners allege that the City is presently engaged in a pattern of violating Govt. Code section 65804. Id., ¶174.

The Sixth Cause of Action is for violation of City Charter (sometimes "Charter") section 562 and LAMC section 12.27(D). Petitioners generally allege that the City has granted variances without making the legally mandated findings under the Charter and LAMC. Id., ¶¶ 177-78.

The Seventh Cause of Action is for violation of Charter section 562, LAMC sections 12.04 and 12.32, as well for an unconstitutional impairment of the City's police powers. Petitioners allege that the City is attempting to elevate development regulations into the position of a municipal ordinance, per LAMC section 12.04 and 12.32, in irreconcilable conflict with Charter section 562. Id., ¶181. In doing so, the City is attempting to override stricter LAMC provisions. Id., ¶182. The LUEP and development regulations are a grant of carte blanche authority which is *ultra vires* and *void ab initio* because they amount to the City's unconstitutional surrender of its police power to regulate land use. Id., ¶ 183.

Finally, the Eighth Cause of Action is for violation of an existing peremptory writ of mandate issued in La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al., ("La Mirada") BS138369 invalidating the Hollywood Community Plan Update ("HCPU"). Id., ¶¶ 191-98. Per the writ, the City rescinded the HCPU and decertified its EIR. Id., ¶201. Accordingly, the FEIR's reliance on the invalidated HCPU warrants the FEIR's invalidation. Id., ¶203-04.

4. Relief Sought

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On the First, Second, Third and Eighth Causes of Action, Petitioners seek: (1) a peremptory writ of mandamus directing the City and City Council to vacate and set aside the actions approving the FEIR, Project approvals, and all land use entitlements; (2) an injunction enjoining the City from granting any authority, permits, certificate of occupancy, or entitlements as part of the Project pursuant to the City's prior actions; and (3) an injunction enjoining Millennium from undertaking construction on the Project. Id., p. 62.

On the Fourth Cause of Action, Petitioners seek a declaration that their due process and fair hearing rights were violated. Id. They request mandamus directing the City to (1) vacate and set aside its actions in approving the FEIR, Project approvals, and entitlements, and (2) provide new and fair hearings that comply in all respects with due process of law. Id.

On the Fifth Cause of Action, Petitioners seek a judicial declaration that the City violated Govt. Code section 65804, as well as mandamus directing the City to develop proper fair hearing policies and procedures during land use appeals. Id., pp. 62-63.

Finally, on the Sixth, Seventh and Eighth Causes of Action, Petitioners seek a writ of mandamus directing the City vacate and set aside its actions approving the Project's land use entitlements. Id., p. 63. They further seek to have the City enjoined from granting any authority, permits, certificate of occupancy, or entitlements pursuant to the City's prior land use entitlement approvals. Id. Petitioners also seek to have Millenium enjoined from undertaking construction on the Project pursuant to the approved land use entitlements. Id.

B. Standard of Review

A party may seek to set aside an agency decision for failure to comply with CEQA by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085.

CEQA review of quasi-adjudicatory agency actions in which a hearing is required, evidence taken, and the agency determines factual issues are governed by administrative mandamus under CCP section 1094.5, in which the court determines whether the agency's decision is supported by substantial evidence. Pub. Res. Code §21168. Examples of such actions include issuance of use permits (Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal.App.3d 1176, 1186), planned use development permits (City of Fairfield v. Superior Court, (1975) 14 Cal.3d 768, 773), and zoning variances. Topanga Assn. For a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506, 517.

CEQA review of quasi-legislative agency actions is governed by traditional mandamus per CCP section 1085, in which the court determines whether the agency prejudicially abused its discretion by not proceeding in a manner required by law or by making a decision not supported by substantial evidence. Pub.Res. Code §21168.5. Examples of such actions include adoption of a general plan or rezoning property. O'Loane v. O'Rourke, (1965) 231 Cal.App.2d 774, 784-85 (general plan); San Diego Building Contractors Assn. v. City Council, (1974) 13 Cal.3d 205, 212-13).

There is no practical difference between the standards of review applied under traditional or administrative mandamus in CEQA cases. Friends of the Old Trees v. Dept. Of Forestry & Fire Protection, (1997) 52 Cal.App.4th 1383, 1389. Public entities abuse their discretion if their actions or decisions do not substantially comply with the requirements of CEQA. Sierra Club v. West Side Irrigation District, (2005) 128 Cal.App.4th 690, 698. Whether an agency abused its discretion requires "scrutiny of the alleged defect" depending on whether the claim is

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predominately "improper procedure or dispute over the facts." Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova, ("Vineyard") (2007) 40 Cal.4th 412, 435. 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. Western States Petroleum Assn. v. Superior Court, (1995) 9 Cal.4th 559, 568.

Petitioners' first, second, and third causes of action alleges violation of CEQA in failing to proceed in the manner required by law, and to some extent the first cause of action challenges the sufficiency of the FEIR. Where an EIR fails to provide certain required information and/or was misleading is failing "to proceed in a manner required by CEQA" and an issue of law. Vineyard, *supra*, 40 Cal.4th at 435. Such issues require "a critical consideration, in a factual context, of legal principles and their underlying values." Harustak v. Wilkins, (2000) 84 Cal.App.4th 208, 212. However, the omission of information in an EIR is not presumed prejudicial, and will rise to the level of a failure to proceed in the manner required by law only if the analysis is clearly inadequate or unsupported. Citizens for a Sustainable Treasure Island v. City and County of San Francisco, ("Treasure Island) (2014) 227 Cal.App.4th 1036, 1046-47.

Whether an agency abused its discretion in an EIR's findings must be answered with reference to the existence of substantial evidence in the administrative record. "Substantial evidence," is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Guidelines[2] §15384(a). The substantial evidence standard requires deference to the agency's factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights Improvement Assn. v. Regents of University of California, ("Laurel Heights") (1988) 47 Cal.3d 376, 393, 409. Argument, speculation, and unsubstantiated opinion or narrative will not suffice. Guidelines §15384(a), (b). Whether substantial evidence exists is a question of law. *See* California School Employees Association v. DMV, (1988) 203 Cal.App.3d 634, 644.

The challenges to violation of the LAMC and City Charter (sixth and seventh causes of action) are traditional mandamus claims. The City is entitled to great deference in interpreting its own ordinances, and the court evaluates as an issue of law whether development regulations are an unlawful delegation of police power. *See* County Mobilehome Positive Action Committtee, Inc. v. County of San Diego, (1998) 62 Cal.App.4th 727, 733. Petitioners have the burden of showing that the agency decision is unreasonable or invalid as a matter of law. City of Arcadia v. State Water Resources Control Board, (2006) 135 Cal.App.4th 1392, 1409. The court must uphold the agency's action unless it is "arbitrary and capricious, lacking in evidentiary support, or made without due regard for the petitioner's rights." Citizens for Improved Sorrento Access, Inc. v. City of San Diego, (2004) 118 Cal.App.4th 808, 814; Sequoia Union High School District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 195.

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[2]As an aid to carrying out the statute, the State Resources Agency has issued regulations called "Guidelines for the California Environmental Quality Act" ("Guidelines"), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

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For the constitutional challenges based on due process and fair hearing (fourth and fifth causes of action), the court independently reviews the proceedings to decide whether a party's rights were compromised. Sinaiko v. Superior Court, (2004) 122 Cal.App.4th 1133, 1140.

Finally, the challenge for a violation of the La Mirada judgment (eighth cause of action) is a traditional mandamus claim for abuse of discretion based on a failure to proceed in the manner required by law and/or based on a lack of substantial evidence. The underlying judgment is interpreted as an issue of law. Dow v. Lassen Irrigation Co., (2013) 216 Cal.App.4th 766, 780-81.

C. Statutory Framework

1. California Environmental Quality Act (CEQA)

The purpose of CEQA, (Pub. Res. Code §21000 *et seq.*,) is to maintain a quality environment for the people of California both now and in the future. Pub. Res. Code § 21000(a). "[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." Save Our Peninsula Committee v. Monterey County Board of Supervisors, (2001) 87 Cal.App.4th 99, 117. CEQA must be interpreted "so as to afford the fullest, broadest protection to the environment within reasonable scope of the statutory language." Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259.

The Legislature chose to accomplish its environmental goals through public environmental review processes designed to assist agencies in identifying and disclosing both environmental effects and feasible alternatives and mitigations. Pub. Res. Code §21002. Public agencies must regulate both public and private projects so that "major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." Pub. Res. Code §21000(g).

Under CEQA, a "project" is defined as any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (1) undertaken directly by any public agency, (2) supported through contracts, grants, subsidies, loans or other public assistance, or (3) involving the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency. Pub. Res. Code §21065. The word "may" in this context means a reasonable possibility. Citizen Action to Serve All Students v. Thornley, (1990) 222 Cal.App.3d 748, 753. "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance. Guidelines §21060.5.

The "project" is the whole of the action, not simply its constituent parts, which has the potential for resulting in either direct or reasonably foreseeable indirect physical change in the environment. Guidelines §15378. An indirect physical change must be considered if that change is a reasonably foreseeable impact which may be caused by the project. On the other hand, a change that is "speculative or unlikely to occur is not reasonably foreseeable." Guidelines §15064(d)(3). The term "project" may include several discretionary approvals by government agencies; it does not mean each separate government approval. Guidelines §15378(c).

An EIR must be prepared for a project if the agency concludes that "there is substantial evidence, in light of the whole record... that the project may have a significant effect on the environment." Pub. Res. Code §21080(d). The EIR is the "heart" of CEQA, providing agencies with in-depth review of projects with potentially significant environmental effects. Laurel

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Heights, *supra*, 6 Cal.4th at 1123. An EIR describes the project and its environmental setting, identifies the potential environmental impacts of the project, and identifies and analyzes mitigation measures and alternatives that may reduce significant environmental impacts. Id. Using the EIR's objective analysis, agencies "shall mitigate or avoid the significant effects on the environment... whenever it is feasible to do so. Pub. Res. Code §21002.1. The EIR serves to "demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions." No Oil, Inc. v. City of Los Angeles, (1974) 13 Cal.3d 68, 86. It is not required to be perfect, merely that it be a good faith effort at full disclosure. Kings County Farm Bureau v. City of Hanford, (1990) 221 Cal.App.3d 692, 711-12. A reviewing court passes only on its sufficiency as an informational document and not the correctness of its environmental conclusions. Laurel Heights, *supra*, 47 Cal.3d at 392.

All EIRs must cover the same general content. Guidelines §§ 15120-32. An EIR should 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. The environmental effects need not be exhaustively reviewed, but the EIR's sufficiency is viewed in the light of what is reasonably feasible. Guidelines §15151. The level of specificity of an EIR is determined by the nature of the project and the "rule of reason." Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, (1993) 18 Cal.App.4th 729, 741-42. The degree of specificity "will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Guidelines §15146. The ultimate decision whether to approve a project is a nullity if based upon an EIR that does not provide decision-makers, and the public, with the information about the project required by CEQA. Santiago County Water District v. County of Orange, (1981) 118 Cal.App.3d 818, 829.

2. Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Fault Zoning Act ("Alquist-Priolo"), (Pub. Res. Code §2621 *et seq.*,) was enacted to prohibit the construction of buildings for human occupancy across the trace of active faults. California Oak Found. v. Regents of Univ. of California, (2010) 188 Cal.App.4th 227, 247; Better Alternatives for Neighborhoods v. Heyman, (1989) 212 Cal.App.3d 663, 670. Alquist-Priolo's purpose is in part to "provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the location of developments and structures for human occupancy across the trace of active faults." Pub. Res. Code § 2621.5. It is also meant to "provide the citizens of the state with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking." Id.

Among other things, Alquist-Priolo requires the State Geologist to publish maps delineating appropriately wide earthquake fault zones, as well active and well-defined fault traces. Pub. Res. Code §2622(a). The State Geologist must "continually review new geologic and seismic data and... revise the earthquake fault zones or delineate additional earthquake fault zones when warranted by new information." Id., §2622(c). Prior to publication, the State Geologist revised maps must be submitted to the State Mining and Geology Board for review and comment. *See* id.; 14 CCR §3602(a).

3. LAMC and City Charter Provisions

a. Adoption of Land Use Ordinances

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Govt. Code section 65804(a) requires all city and county zoning agencies (including charter cities) to "develop and publish procedural rules for conduct of their hearings so that all interested parties shall have advance knowledge of procedures to be followed." Zoning agencies are required to create and preserve a record of their hearings, which must be made available (at a cost). Govt. Code §65804(b).

City Charter section 558 governs the adoption, amendment, and repeal of ordinances, orders and resolutions by the City Council which concern, among other things, land-use zones or districts, zoning or land-use regulations. City Charter §558(a).

LAMC section 12.32 governs the City's adoption of land use ordinances in accordance with Govt. Code section 65804 and City Charter section 558. The City Council, Planning Commission, or Director of Planning may initiate consideration of a proposed land use ordinance, the first two by a simple majority vote. LAMC §12.32(A). An owner of property may also apply for a land use ordinance for matters governed by subdivisions F through S. LAMC §12.32(B).

The Planning Commission is authorized to make an initial recommendation regarding the approval or disapproval of a proposed land use ordinance, which will then considered by the City Council. LAMC §12.32(C)(1). The City is required to provide at least 24 days' advance notice of the time, place and the public hearing on the proposed land use ordinance. LAMC §12.32(c)(4). Notice must either be in the form of publication, or in the form of mailings to owners within 500 feet of the affected property. Id. The applicant, if any, must also post notice in a conspicuous place at the affected property. Id.

Where the proposed land use ordinance concerns an amendment to zoning regulations, the Planning Commission is not required to comply with these strict notice requirements, nor must the matter be set for public hearing. *See* LAMC §12.32(E). Similarly, where the proposed land use ordinance involves a change in zone or height district, the Planning Commission may, without additional notice or hearing, recommend minor increases in affected areas or boundaries, provided that it determines that doing so is required by public necessity, convenience, general welfare or good zoning practice. LAMC §12.32(F)(1).

The Planning Commission hearing must be recorded or summarized. LAMC §12.32(C)(5)(a). If proceedings are recorded, the must be transcribed with copies made available to interested parties in exchange for a fee. Id. A copy of the transcript must be furnished to the Planning Commission and placed on file. Id. Additionally, after the hearing's conclusion, the Planning Commission's Director must submit a report setting forth his or her conclusions and recommendations, and the reasoning for them. LAMC §12.32(c)(5)(b).

Following the Planning Commission's decision to recommend approval or disapproval of a proposed land use ordinance, the City Council may approve or disapprove the ordinance. LAMC §12.32(c)(7). The City Council's decision must occur within 90 days of the recommendation. Id. If the proposed ordinance is approved by the City Council, it must make findings that its action is consistent with the General Plan and is in conformity with public necessity, convenience, general welfare and good zoning practice. Id.

The applicant may appeal the Planning Commission's recommendation to disapprove a proposed land use ordinance by filing an appeal with the City Clerk within 20 days of the decision. LAMC § 12.32(D)(1). If no appeal is filed, the Planning Commission's recommendation will be considered final. Id. At any time prior to the City Council's decision on the appeal, the Planning Department must submit any pertinent supplemental information that the City Council or its PLUM requests. LAMC §12.32(D)(2).

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b. Q Qualified Classification

LAMC section 12.32(G) provides a series of possible special zoning classifications, one of which is a "Q Qualified" classification. *See* LAMC §12.32(G)(2). Ordinarily, rezoning a property allows the occupant to maintain it for any use permitted by-right therein. *See, e.g.*, LAMC 12.14 (listing uses allowed by right in "C2" commercial zones). A Q Qualified classification allows the City Council to rezone a property to restrict its use from the full range of uses in that zone. *See* LAMC §12.32(G)(2)(a). The classification can also be used to impose certain standards (or conditions) on the intended redevelopment. Id. The express purpose of such classifications is to (1) protect a neighborhood's best interests and assure compatible development therein, (2) secure appropriate development in harmony with the objectives of the applicable General Plan, or (3) prevent or mitigate the potential environmental impact of a zone change. LAMC §12.32(G)(2)(a)(1)-(3).

Q Qualified classifications may be either permanent or temporary. *See* LAMC §12.32(G)(2)(a). If made on a temporary basis, the classification lasts for up to six years. *See* LAMC §12.32(G)(2)(b)(1), (f). Once a certificate of occupancy is issued for a development, the temporary Q Qualified classification becomes permanent. LAMC §12.32(G)(2)(e). Until that point, the six-year time limit can be extended if there is "substantial physical development" of the property for the classification's permitted uses. LAMC §12.32(G)(2)(f). Otherwise, the classification becomes null and void if the time limit expires. Id.

c. Variance Procedure

City Charter section 562 sets forth the minimum standards and procedures for the granting a zoning variance. All initial determinations on variances are made by the Zoning Administrator ("ZA"). Charter §562(a). ZA determinations are appealable to the appropriate Area Planning Commission, and then the City Planning Commission or City Council (as prescribed by ordinance). Charter §562(b). Even if an ordinance requires that the appeal be made to the City Planning Commission, the decision is nevertheless subject to the City Council's discretionary review pursuant to City Charter section 245. Id. In any event, variances may not be granted without the following findings being made:

(1) that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;

(2) that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;

(3) that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;

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(4) that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and

(5) that the granting of the variance will not adversely affect any element of the General Plan. Charter §562(c).

LAMC section 12.27 generally implements City Charter section 562, and governs the adoption of ordinances. Consistent with Charter section 562(c), LAMC section 12.27(D) requires that the ZA make the same five findings in writing. The ZA's decision to approve or deny a variance is appealable to the appropriate Area Planning Commission, and then in turn to the City Council directly. *See* LAMC §12.27(G)-(O).

D. The Requests for Judicial Notice

Petitioners ask the court to judicially notice 13 documents (Exs. A-M). Exhibits B-M consist of LAMC and Charter provisions (Exs. B, I, J, K), court records from La Mirada, BS 138369 and South Central Farmers v. City of Los Angeles, BS117561 (Exs. E-G, L), a City Council action (Ex. H), and a State Attorney General opinion (Ex. M). These requests are unopposed and are granted. Ev. Code §452(b), (c), (d).

Exhibit A is a City printout from the City's Ethics Commission website showing payments made by Millenium to various entities. The joint Opposition argues that Exhibit A is not part of the Administrative Record, it is immaterial that Petitioners seek to add it via judicial notice rather than a motion to augment, and it should not be judicially noticed because it is irrelevant. The Opposition explains that the payments were made by Millenium to its lawyers, engineers and consultants working on this Project; they were not made to City officials. The payments were disclosed only because the City's broadly worded lobbying ordinance requires payments for providing advice or strategy to a client be disclosed as "lobbying activities." Opp. at 6-7. Petitioners respond that the payments are not offered under CEQA, but rather to show due process violations. Reply at 1.

Exhibit A is an official act subject to judicial notice. Ev. Code §452(c). It also is relevant to Petitioners' due process claim. The request is granted.

Exhibit C is a map released by CGS on November 6, 2014 depicting the location of Alquist-Priolo Earthquake Zones and Seismic Hazard Zones within the Hollywood Quadrange. Exhibit D is a Supplement to a Fault Investigation Report issued by CGS on November 5, 2014 to support its adoption of Exhibit C. CGS prepared Exhibits C and D to assist cities and counties in planning development. After the State adopts a map that delineates an Earthquake Fault Zone, the affected cities and counties regulated development within the Zone, including requiring the preparation of a geologic report discussing any hazard of surface fault rupture. Pub. Res. Code §2623(a).

The joint Opposition argues that the City did not have Exhibits C and D when it approved the Project, and they are irrelevant. In any event, the City treated the Project site as if it was within a Fault Zone. The mitigation conditions imposed on Millenium require it to conduct the same investigation and geologic report that would be required by placement in the Earthquake Fault Zone. Opp. at 8.

Petitioners contend that the City may have treated the Project Site as within an Earthquake Fault Zone, but that fact is insufficient for purposes of public information. The City

knew that CGS was studying the area, yet never changed the statements in the DEIR that the Project site was not in an Alquist-Priolo zone. The public should have been informed of this fact, and CGS's subsequent action reinforces that conclusion. Reply at 3.

Exhibits C and D did not exist at the time of approval, and they corroborate Petitioners' position. Nonetheless, they are inadmissible to challenge the City's approval of the FEIR and the Project entitlements. To the extent that Petitioners' CEQA challenge is quasi-legislative, extra-record evidence is completely inadmissible for the determination of whether the decision is supported by substantial evidence or the agency proceeded in the manner required by law. Western States Petroleum Assn. v. Superior Court, ((95) 9 Cal.4th 559, 573, 574-76. To the extent the challenge is quasi-adjudicative, the admission of extra-record evidence is governed by CCP section 1094.5(e). Petitioners do not discuss the requirements for the admission of extra-record evidence. The requests are denied.

In a "Second Supplemental Request for Judicial Notice" filed on April 14, 2015, Petitioners ask the court to judicially notice excerpts from an EIR dated November 2010 for the NBC/Universal Evolution Plan and the City Council's action approving and certifying the Plan (Ex. N). Petitioners argue that the excerpts are relevant to whether the Millenium FEIR adequately addressed cumulative impacts. Mot. at 2. While this may be true, Petitioners make no showing that the evidence was presented to the City before approval of the Project, or that the evidence meets the test for extra-record evidence. Petitioners also provide no reason why they waited to file the request with their reply, or give any indication that the evidence is properly responsive to a new issue raised by the Opposition. The City and Millenium have had no opportunity to object to the request, and it is denied.

The City and Real Party ask the court to judicially notice five documents (Exs A-E), including LAMC provisions (Exs. A, B, D), a Charter provision (Ex. E), and a court filing in La Mirada (Ex.C). The unopposed requests are granted. Ev. Code §452(b), (d).

E. Statement of Facts

1. The Project

The instant proceeding concerns a proposed 4.4 acre mix-use redevelopment project, spanning on two lots on the east and west sides of Vine Street south of Yucca in Hollywood ("Project"). AR 4211, 4215. The site is accessible from the Hollywood Freeway (US-101), with freeway on and off-ramps approximately one block north at Franklin and Vine, and Franklin and Argyle, respectively. AR 4217. In concept, the Project will include a mix of residential units, offices, a hotel, a health club, and retail spaces totally a developed floor area of approximately 1, 166,970 square feet, yielding a floor area ratio ("FAR") -- the total square footage of a building divided by the total square feet of the building's lot -- of 6:1. AR 4233.

2. Millennium's Initial Application

On August 18, 2008, Real Party Millennium filed a Master Land Use Permit Application with the City's Planning Department ("City Planning"). AR 21309-11. The Project was described as a mixed-use development consisting of approximately 492 residential units, a 200-unit luxury hotel, 100,000 feet of office space, an approximately 34,000 square foot sports club and spa, more than 11,000 square feet of commercial uses and approximately 34,000 square feet of food and beverage uses. AR 21321. The historic Capital Records Tower and Gogerty Buidling are located within the Project Site, and would be preserved as office and music recording buildings. Id. Thereafter, the City's Department of Building & Safety ("LADBS")

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informed Millennium's attorney that the Project's enclosed balconies would render the building in excess of the maximum 6:1 FAR allowable under the City's General Plan, thus requiring a variance. AR 68250.

Millennium took time to review its plans and no further substantive progress occurred until 2011. *See* AR 68255-56.

3. <u>The NOP and Caltrans' Concern</u>

Millennium submitted another Master Land Use Permit Application with the City's Planning Department in April 2011. AR 10987-90. As part of its application, Millenium proposed (1) custom "Development Regulations" for the Project that would be incorporated in the Project approvals and contain standards for the Project's development that would prevail over zoning or land use regulations in the LAMC (AR 845-904, 853), and (2) a "Land Use Equivalency Program" ("LUEP") that would provide flexibility to Millenium to adjust the type and density of land uses for the Project, allowing Millennium to request and obtain a transfer of land uses before development of any Project phase so long as it stayed within the FAR and trip cap of 1498 new peak hour vehicle trips per day set forth in the EIR (AR 13789-90). AR 10987-90.

As the lead agency, the City issued a CEQA Notice of Preparation and Public Scoping Meeting for an EIR ("NOP") on April 28, 2011. AR 6225-31. The City's project description was for a maximum 1,166,970 square foot of floor space (6:1 FAR), preserving and maintaining the existing Capitol Records and Gogerty Building, a mix of residential, hotel, office, restaurant, health and fitness club, and retail uses, using the LUEP to provide development flexibility for future demands of the market and economy by allowing adjustment between land uses from several development scenarios, and Development Standards as embodied in a Development Agreement. AR 6226.

The Project would require entitlements of (1) a Development Agreement, (2) Vesting Tentative Tract Map ("VTTM") for the mixed use development, (3) zone change from C4 to C2, (4) height district change, (5) conditional use permit ("CUP") for alcohol and live entertainment, (6) Vesting CUP for hotel, (7) variance for sports club parking and for restaurants with outdoor eating areas above ground floor, (8) demolition and grading permits, (9) haul route approval, and (10) design review and approval to permit FAR above 4.5:1. AR 6227.

An Initial Study, also prepared on April 28, 2011, noted that the Project would develop a mix of land uses, including residential, luxury hotel, office, restaurant, health and fitness club, and retail. AR 30569. The LUEP would define a framework for permitted land uses and square footages which could be exchanged so long as the 1,166,970 square footage and 6:1 FAR were not exceeded and no additional environmental impacts occurred. <u>Id</u>. The Initial Study noted, *inter* alia, that the Project Site was not within a State-designated Alquist-Priolo Zone or other designated fault zone. However, a portion of the western portion of the Site is adjacent to the boundary of a City fault rupture study zone. The City zoning map (ZIMAS) shows the closest fault with a potential for rupture is the Santa Monica/Hollywood Fault which is 0.4 miles away. AR 30577. The Initial Study concluded that an EIR was required because the Project may have a significant environmental effect. AR 30570. The (now defunct) City of Los Angeles Community Redevelopment Agency ("CRA-LA"), South Coast Air Quality Management District ("SCAQMD") and Los Angeles Regional Water Quality Control Board ("LARWQCB") were designated as the "Responsible Agencies" under CEQA. AR 30569.

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After the public scoping meeting was held, the California Department of Transportation ("Caltrans") expressed concern in a May 18, 2011 letter over the Project's traffic impact on the 101 Freeway. AR 31506. Caltrans had a specific concern about the possibility of vehicle queuing at the 101 Freeway on-ramps and off-ramps nearest to the Project. Id. Caltrans recommended that the City prepare a traffic study to determine whether the Project-related traffic, plus the cumulative traffic, would cause such issues. Id. Caltrans reminded the City that as a responsible agency under CEQA, it had the authority to determine the required freeway analysis for the Project and was responsible for off-setting Project vehicle trip generations that worsen the 101 Freeway. AR 31507. Caltrans noted that even the County's Congestion Management Plan ("CMP") standards provide that Caltrans should be consulted for the analysis of State facilities. AR 31507. Caltrans stated that trip generation, trip distribution, choice of travel mode, and assignments of trips to the 101 Freeway should be analyzed for all on/off ramps within five miles of the Project site, preferably using the Caltrans Traffic Impact Study Guide ("TISG"). AR 31506-07.

4. The DEIR

In October 2012, the City prepared a Draft Environmental Impact Report ("DEIR"). *See generally* AR 4082-5331. Per the DEIR, the Project was anticipated to encompass 492 residential units, 200 hotel units, 300 square feet of office, retail, restaurant, and fitness center/sports club space. AR 4234. The DEIR listed Caltrans as a responsible agency for its review of traffic impacts upon state highways and enforcement of any highway mitigation measures. AR 4260.

In analyzing potential traffic impacts, the DEIR applied the County's standard CMP methodology which requires that an EIR analyze traffic conditions at all CMP monitoring arterial intersections where the project would add 50 or more trips during the weekday peak hours, and at all mainline freeway monitoring locations where the project would add 150 or more trips during weekday peak hours. AR 4955, 4975. The DEIR analyzed 37 arterial intersections, including those directly adjacent to nearby 101 freeway ramps. AR 4927. The DEIR also studied cumulative traffic impacts applying both a 1% annual ambient growth factor for the Hollywood area and a list of 58 related projects. *See* AR 4317-20, 4980. The DEIR concluded that the Project would result in a less-than-significant impact in terms of trip generation, including trips using freeway segments. AR 4975.

The DEIR addressed the Project Site's subsurface geology, including seismic and fault rupture issues. AR 4589-602. The DEIR noted that the Project was not located within a designated Alquist-Priolo Earthquake Fault Zone. AR 4591. However, the Project's eastern portion was adjacent to the boundary of a fault rupture study zone included as part of the Safety Element of the City's 1996 General Plan. Id. The DEIR also noted that, according to CGS and ZIMAS, the closest earthquate fault with the potential for fault rupture was the Santa Monica Hollywood Fault (the "Hollywood Fault"), which was approximately 0.4 miles away. Id. The DEIR further included a Preliminary Geotechnical Study that analyzed subsurface borings performed on the property (*see* AR 8211-59), and seismic-geology mitigation measures, including a mitigation measure requiring substantial additional subsurface testing and monitoring prior to issuance of building or grading permits. AR 4136-37.

The DEIR addressed the Project's impact on fire protection services. AR 4804-24. The DEIR stated that response time relates directly to distance, and the preferred response time of the Los Angeles Fire Department ("LAFD") is to arrive at the scene of a call-out for all emergencies

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within five minutes 90% of the time. AR 4800. The DEIR acknowledged that a City Controller audit of LAFD in May 2012 concluded that there has been an increase in response times for medical first responders, but not the time standard for fires and non-medical incidents. The DFEIR stated that the Controller's audit was presented for informational purposes only, and relied on LAFD-supplied response times. AR 4800.

The DEIR noted that CEQA Guidelines, Appendix G, provides that a project could have a significant environmental impact if new government facilities are necessary in order to maintain acceptable response times for fire protection and the construction of the new facilities could cause significant environmental impacts. AR 4804. The City's CEQA Thresholds Guide also provides that, if a project requires the addition of a new fire station or expanded facility to maintain service, the determination of whether the new construction could cause a significant environmental impact will be determined through a case-by-case evaluation. AR 4804-05. The DEIR noted that the Project Site is only 0.7 miles from a LAFD fire station housing a truck company and 0.8 miles from a fire station housing an engine company. AR 4807. Both the truck and engine companies are within the 1.5 mile maximum response distance required by Fire Code section 57.09.06 and applicable response times. Average response times for those two stations are less than five minutes, and the environmental impact was deemed less than significant. AR 4808.

The DEIR was circulated for 45 days, with a public hearing being held on February 19, 2013. *See* AR 21084-85.

5. <u>Millennium's Fault Investigation Report</u>

Pursuant to LAMC section 17.05(U), Millenium prepared and the City approved a preliminary soils report. AR 29810-11; Opp. RJN Ex.A.

Because a 2010 CGS map showed the Hollywood Fault as active, and it "appears to exist in the vicinity of the subject site," the City required a fault investigation report pursuant to Los Angeles Building Code section 1803.5.11. *See* AR 29813.

A Fault Investigation Report dated November 30, 2012 ("Fault Report") was prepared by Millenium's consultant, Langan Engineering. AR 29864-79 (without exhibits). The Fault Report stated that the Hollywood fault is active and has the potential for rupture. According to CGS and the City's ZIMAS mapping system, the Hollywood fault is located approximately 0.4 miles from the Project Site. AR 29870. The Fault Report explained that, although the Project Site is not located in a current State or City-mandated fault investigation zone, the City required a fault investigation anyway since the Project Site is within 500 feet of the Hollywood fault trace as mapped by CGS. AR 29867. The Fault Report concluded that "active faulting is not present within the limits of our investigation within the Site...." AR 29875.

6. <u>Caltrans' DEIR Comment Letter</u>

In a December 10, 2012 letter, Caltrans expressed a series of "major concerns" with the DEIR's traffic analysis, referencing its May 18, 2011 letter in response to the NOP. AR 31785-88. Caltrans' primary concern was that the City's June 2012 Traffic Impact Study ("Traffic Study") for the DEIR did not follow the procedures outlined in the TISG, and did not analyze impacts to the state highway system. AR 31785. Specifically, the Traffic Study only applied the CMP criteria and failed to provide adequate information for direct traffic impacts to the 101 Freeway's mainline segments and ramps. AR 31786. Additionally, the DEIR and Traffic Study omitted a cumulative traffic analysis for the 101 Freeway which would consider the impact of 58

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related projects, the proposed NBC-Universal project, and anticipated growth from the Hollywood Community Plan. Id.

Caltrans also took issue with the DEIR's conclusion that the Project (without mitigation) would not generate significant trip generation impacts at CMP locations and on 101 Freeway segments. Caltrans asserted that this conclusion was "not based on any credible analysis that could be found anywhere in the DEIR." To the contrary, Caltrans opined that the Project would *significantly impact* the state highway system. Id. The Traffic Study's projected trip generation figures appeared to be "unreasonably low," and Caltrans requested that the City verify them. AR 31786-87. Particularly questionable was the Traffic Study's high number of trip-reduction credits. AR 31867.

The Traffic Study also did not include a series of nearby 101 Freeway on-ramps and off-ramps (*e.g.*, the Vine Street off-ramp), the inclusion of which was necessary to show projected queuing and upstream buildup, which is a safety issue. Id. In order prevent queuing and backup, City intersections adjacent to the Project needed to be able to adequately absorb increased off-ramp volumes at the same time as serving local circulation. *See* id. A Highway Capacity Manual ("HCM") weaving analysis also needed to be performed. Id.

In sum, Caltrans was "concerned that the project impacts may result in unsafe conditions due to additional traffic congestion, unsafe queuing, and difficult maneuvering" for the 101 Freeway, where the Level of Service (sometimes "LOS") is "F". AR 31867, 31786. If the City did not address these concerns, Caltrans refused to "recognize the [Traffic Study] and DEIR as adequately identifying and mitigating the project's impact to the State highway facilities." AR 31867.

7. The FEIR

The FEIR was published on February 8, 2013. The FEIR included over 500 pages of responses to comments. *See* AR 151-661.[3]

In response to Caltrans' comments, the City stated that it consulted Caltrans and considered its concerns. AR 181. The City disputed Caltrans' concern that it did not analyze the Project's impact on the state highway system. Id. The DEIR's Traffic Study analyzed "key freeway ramps" using the City's own "level of service" methodology, and of freeway mainline segments using the County's CMP-recommended methodology. Id. Caltrans' TSIG was consulted, but it did not provide thresholds of significance which CMP, a state-mandated program, did. Id. The City neither confirmed nor denied Caltrans' status as a CEQA responsible agency. *See* id.

As for freeway segment analyses, the City asserted that the Traffic Study concluded that Project impacts to the 101 Freeway would be less than significant so no further analysis was necessary. AR 181. Support for that conclusion was provided by the recently certified EIR for the Hollywood Community Plan Update ("HCPU"). Id.

The City added that it performed a supplemental traffic study using methodologies developed by the Southern California Association of Governments ("SCAG"). Id. The supplemental traffic analysis verified the City's initial conclusions that the Project will not result in the addition of 150 trips or more to any freeway segment, and therefore traffic impacts on the freeway system will be less than significant. Id.

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[3] The City received only a few seismic comments that generally did not address the FEIR's sufficiency or methodology. AR 23892, 23995, 24019. *But* see AR 23924.

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With respect to Caltrans' criticism of the Traffic Study's failure to include a cumulative traffic analysis for the 101 Freeway -- including from the 58-related projects in the DFEIR, the NBC-Universal project, and Hollywood Community Plan growth -- the City did not directly address the proposed NBC-Universal project. *See* id. However, the City referred to its extensive transit system in the Project's vicinity, stating that the Project would provide "in-fill uses" that would reduce regional trip demand. Id. The City's reliance on transit solutions was also consistent with the City's traffic study guidelines and the HCPU's objectives. Id.

As for the on-ramp/off-ramp issues, the City responded that its own procedures were selected as the most appropriate for use in the Traffic Study, and the ramps chosen were where impacts were expected to be the most significant and substantial. AR 183. The ramps listed by Caltrans were not expected to be a capacity restraint issue. Instead, the signalized intersections and mainline 101 Freeway sections present the capacity restraints, and the queues from those constraints determine the ramp conditions. AR 184. The queuing issue will depend on under-signaling at the intersections. Id.

The City's trip generation estimates -- 19,486 trips per day with 1064/1888 trips during the AM/PM peak hours -- were based on well-accepted guidelines. AR 184. Additionally, it is a common practice to reduce trips for transit trips, pass-by trips, and internal trips associated with mixed-use projects. Id.

The City stood by its use of the critical movement analysis ("CMA") methodology for congestion modeling as per the City's Department of Transportation ("LADOT") manual instead of Caltrans' preferred HCM methodology. AR 186. The CMA is a planning methodology, whereas HCM is an operations methodology. Id. The HCM also assumes *constant signal timing*, which is problematic given that the City employs instantaneous, computer-controlled signaling, the timing of which varies depending on traffic. Id.

8. Caltrans' Supplemental Comment Letter

On February 13, 2013, Caltrans submitted a supplemental comment letter after reviewing the FEIR. AR 22840-44. Caltrans stood by its assertion that the City's use of the CMP methodology did not adequately study impacts to the freeway system. AR 22840. According to Caltrans, the City's Traffic Study analysis improperly focused on the Project's impact on the local CMP, rather than impacts to the existing state highway system, particularly for safety issues. AR 22840-41. The Traffic Study also did not provide sufficient traffic analysis for the reader to review its assumptions, analysis, and conclusions. AR 22841.

Caltrans asserted that the CMP does not capture the same data for analysis that the HCM does. AR 22841. For example, the CMP does not analyze off-ramps or freeway impacts with fewer than 150 trip assignments, even where the existing LOS is F. Id. It also uses a "flawed percentage ratio to determine the significance of impacts," and incorrectly analyzes cumulative traffic impacts. Id. Caltrans again faulted the City for failing to undertake a queuing analysis. Id.

After receiving no response from the City, Caltrans sent a fourth letter dated May 7, 2013 to then-Councilmember Eric Garcetti. *See* AR 11853-54. In the May 7 letter, Caltrans generally repeated its grievances about why it felt the FEIR was inadequate. *See* id.

9. The Initial Hearing on the Vesting Tentative Tract Map and FEIR

Under the Subdivision Map Act, Millenium processed a VTTM for a 41-lot subdivision of the property. On February 19, 2013, 11 days after the FEIR's release, an initial hearing was

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held by the City's Deputy Advisory Agency on the proposed VTTM and the FEIR. AR 21084-85. Although the parties do not cite to the decision, the DAA apparently approved the Project's VTTM and supporting FEIR.

10. The Planning Commission Hearing

On March 28, 2013, the Planning Commission heard the appeals from the Deputy Advisory Agency's approval of the VTTM and FEIR. AR 2. At the outset of the hearing, Deputy City Attorney Adrienne Khorasanee (the "City Attorney") announced that due to a financial conflict of interest by one of its commissioners, the Planning Commission was disqualified from considering approval of the Development Agreement for the Project. AR 74812. As a result, Millenium decided to withdraw the Development Agreement, which was removed from the agenda. AR 74812. The City Attorney advised the Planning Commission that it could nevertheless consider the other items concerning the Project. Id.

The Project opponents were given 30 minutes to speak at the Planning Commission hearing. *See* AR 74882. Petitioners' attorney, Daniel Wright, Esq., spoke on behalf of Mr. and Mrs. Jim Geoghan, who represented the neighborhood associations appealing the initial determination. *See* AR 74883-95. Mr. Wright argued that the commissioner's conflict of interest meant that the entire Planning Commission should be disqualified from the matter and that the hearing should be terminated. AR 74885-86. Mr. Wright also made a due process objection based on his belief that the exhibits he filed were neither accepted nor considered. AR 74886. Commissioner Perlman responded that the Planning Commission had received the exhibits, which were in the record, as was Mr. Wright's last minute two-page letter. AR 74886-87.

After the appellants spoke, several prepared statements were read by City representatives. *See* AR 74918-19. Next was a 90 minute public comment period, with time split evenly between supporters and opponents. See AR 74927.

At the conclusion of the hearing, the commissioners voted to deny the appeals from the approval of the VTTM and FEIR. AR 21149. Thereafter, the commissioners voted to adopt the Planning Commission staff's recommended actions, including approval of various CUPs, variances, and changes to the Development Regulations. *See* AR 4-7, 21149, 75168-72. The Planning Commission also voted to recommend that the City Council (1) adopt an ordinance authorizing the execution of a Development Agreement; (2) adopt a zone change and height district change; and (3) certify the FEIR and Statement of Overriding Considerations. Id.

11. The PLUM Hearing

On June 18, 2013, the matter was heard before the City Council's Planning and Land Use Management Committee ("PLUM"). AR 29-33, 75300-79. Petitioners' attorney, Robert Silverstein, Esq., spoke on behalf of appellant CURD. *See* AR 75178. He requested at least ten minutes to make his objections. AR 75177-78. The Chairperson responded; "Well, why don't you start, and let's see how far you get?" AR 75178. Mr. Silverstein offered a letter with 27 exhibits for PLUM's consideration. *See* AR 75178. In addition to arguing about the dangers posed by the Hollywood Fault (AR 75178-90,) Mr. Silverstein argued that the Planning

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Commissioner's disqualifying conflict of interest should have resulted in the withdrawal of all items concerning the Project. AR 75190-92.[4]

After a presentation by Millennium, the PLUM gave 20 minutes of general public comment to each side. AR 75224. Anne Geoghan, a member of CURD, was one of the speakers during this period. AR 75251-52. At the conclusion of the hearing, the PLUM voted to take all actions recommended by the staff report. *See* AR 29-33, 75295-97. The changes to the Development Regulations and Q conditions requested by Millennium and the Planning Department were adopted by reference. AR 31. Therefore, the PLUM implicitly denied the appeal. *See* id.

12. The State Geologist's Letter

On July 20, 2013, State Geologist John Parrish sent Councilmember Wesson a letter indicating that CGS was commencing a study of the Hollywood Fault, pursuant to Alquist-Priolo for possible zoning as "Active." AR 19063-64. The State Geologist mentioned the Project, which he stated may fall within an Earthquake Zone. Id. He advised that the study's outcome would provide the City with new information for its consideration of current and future developments along the Hollywood Fault, and indicated that the investigation and resultant maps were scheduled for completion by late 2013 or early 2014. Id.[5]

13. The City Council Hearing

The City Council's hearing for the Project took place on July 24, 2013. AR 105, 113-16. The day before the hearing, Millennium submitted a 311-page letter and supporting evidence responding to CURD's arguments and evidence on appeal. AR 19086-393.[6]

Mr. Silverstein again represented CURD and other Project appellants. See AR 75331. At the outset of the hearing, the Chairman gave ten minutes for each of the two appellants, ten minutes for the applicant, and ten minutes each for all supporters and opponents. AR 75301. Mr. Silverstein requested more time to make his case, but the Chairman refused to give him the other appellant's ten minutes. AR 75330-31.

Mr. Silverstein objected to Millenium's last-minute letter as an attempt to sneak in new studies and data, and a violation of due process. AR 75332-33. He addressed the letter written by the State Geologist on the Hollywood Fault issue, and argued that the Project Site is within an earthquake fault zone. AR 75336.

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[4] Prior to the PLUM hearing, Millennium sent a May 31, 2013 letter requesting a series of changes to the Q Conditions for approval and to the Development Regulations. *See* AR 18466-70. The City's Planning Department also made a recommended modification to Q Condition No. 2 and corrections to the Development Regulations. *See* AR 19038-42. These requested changes were not addressed by Mr. Silverstein at the PLUM hearing. *See* AR 75178-92.

[5] Petitioners attempt to present the results of this study showing that the Project is in fact within the Hollywood fault zone (RJN Exs C, D), but the court has denied this request.

[6] In a letter to the City Council dated the day of the hearing, LADBS noted the State Geologist's July 23, 2013 letter stating that investigation may show that the Project lies within an Earthquake Zone, and responded that LADBS already treats the Project Site as if it is located in an Earthquake Zone. It was for this reason that Millenium was required to prepare the Fault Report. AR 13791-92.

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A typed amending motion was announced as circulated by the City Clerk, which was unanimously approved by the City Council. AR 75301, 75378-79. The City Council then denied all appeals and approved the Project in full. AR 125, 133-37. Thus, the City Council: (1) certified the FEIR; (2) adopted the Statement of Overriding Considerations; and (3) granted a series of land use entitlements, including a vesting CUP for a hotel within 500 feet of a residential zone, a master CUP to sell an dispense alcohol for on and off-site consumption and live entertainment, zone variances for outdoor eating above the ground floor and to permit reduced parking for a sports club facility, reduced on-site parking, and the VTTM. *See* AR 11643 (Council Amending Motion), 125-50, (City Council Action).

The Project's vested land use entitlements include Ordinance No. 182636 (the "Ordinance"), which effectuates for the Project property a zone change from a C4 zone with a 3:1 FAR and no height limitation to a C2 zone with height limitation and 6:1 FAR. AR 11644-95. The Ordinance also includes the Development Regulations, (AR 18574-635) and the LUEP (AR 13789-90), which define and restrict the Project's mix of uses, design, height, scale, and massing, and any future change in the mix of uses. AR 13789, 18586. The Ordinance further contains a Mitigation Monitoring and Reporting Plan ("MMRP"), which contains all of the mitigation measures listed in the EIR. These entitlements and conditions thereto were recorded with the County Recorder's Office. *See* AR 11656.

14. Invalidation of the Hollywood Community Plan Update

On February 11, 2014, the Honorable Ann J. Jones rendered judgment in La Mirada, LASC Case No. BS 138580. *See* Pet. Pet. RJN Ex. F. Pursuant to the court's judgment, a peremptory writ of mandate was issued invalidating and setting aside the HPCU and the EIR certified for the HCPU. Id., p. 1. The La Mirada judgment also set aside and vacated the related approvals issued in furtherance of the HCPU. Id., pp. 1-2. The judgment stated that its provisions were not intended to order the City to rescind "those adjudicatory approvals not challenged which the City may have made under the HCPU after its adoption by the City." Id., p. 2.

The City accepted the La Mirada judgment without appeal, and it is now final. The original 1988 Hollywood Community Plan ("HCP") became operative again after the City rescinded the HCPU. *See* AR 24045.

F. Analysis

Petitioners argue that the City violated CEQA by (1) refusing Caltrans' direction as a responsible agency to study impacts to the 101 Freeway, (2) failing to notify and consult with CGS as an agency with jurisdiction, (3) failing to provide a fixed and stable Project description, (4) failing to advise the public of seismic issues, (5) failing to properly analyze traffic impacts, (6) failing to properly analyze fire/safety service impacts and (7) relying on the HCPU which was later set aside by the La Mirada judgment. In their non-CEQA claims, Petitioners argue that (1) the La Mirada judgment requires rescission of all HCPU-related approvals such as the Project, (2) the City's approval of the Development Regulations and elevation of them over all other LAMC provisions was illegal, and (3) the City Council's unfair hearings violated due process.

1. The City Was Required to Follow Caltrans' Preferred Traffic Study Methodology

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Caltrans contended that the City's traffic figures for the Project of 20,000 vehicle trips and 1064/1888 peak period AM/PM vehicle trips – which Caltrans described as low and not based on credible analysis (AR 11859) -- required a Traffic Impact Study using Caltrans' TISG. Concerned about queuing and upstream freeway buildup, Caltrans wanted a study of 101 Freeway on/off ramps near the Project. Caltrans also wanted a weaving analysis pursuant to its Highway Capacity Manual ("HCM"). Caltrans further stated that the FEIR omitted a cumulative traffic analysis for the 101 Freeway which included the NBC-Universal project, which was necessary whether or not the City was correct about only 150 additional trips generated. Thus, Caltrans concluded that the FEIR did not adequately analyze the Project's impact to the state highway system. Mot. at 6-8.

In response to Caltrans, the City relied on the traffic analysis required by the CMP, which is the standard methodology for traffic studies in the County, and analyzed key freeway ramps as well as freeway mainline segments, finding a less than significant traffic impact. A supplemental traffic study using SCAG methodologies confirmed this conclusion. The City did not expect the ramps listed by Caltrans to be a capacity restraint issue. The City contended that Caltrans' allegation about its low trip estimates was unwarranted as the estimates were based on well-accepted guidelines. Finally, the City preferred its congestion modeling to Caltrans' HCM methodology which is inapplicable to planning issues.

Thus, there was a clear dispute between the City and Caltrans over the adequacy of the FEIR's Traffic Study analysis for impacts to the 101 Freeway.

The lead agency under CEQA is the agency that carries out a project or has primary authority for approving a project. Pub. Res. Code 121067; Guidelines §15051. Where the project is local, such as land use decisions, the agency that has general governmental power over a project is almost always the lead agency. *See* Guidelines §15051(a).

If the lead agency determines that an EIR is required, it must send notice to each responsible agency. Pub. Res. Code §21080.4(a). A "responsible agency" means an agency which has some discretionary responsibility for carrying out or approving a project. Pub. Res. Code §21069; Guidelines §15381. Upon receipt of the notice, each responsible agency "shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency...and which, pursuant to the requirements of this division, shall be included in the environmental impact report." Pub. Res. Code §21080.4(a); Guidelines §15082(b) (responsible agency shall provide detail about the scope and content of environmental information that "must be included in the draft EIR").

The lead agency shall include the responsible agency's information in the EIR. Guidelines §15096(b)(2). The lead agency may begin work on the draft EIR without waiting for responses, but the draft "may need to be revised or expanded to conform to" the responsible agency responses. Guidelines §15082(a)(4). *See* Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission, (1992) 10 Cal.App.4th 908 (city as lead agency complied with its duty to produce comprehensive document which responsible agency could rely upon in its discretionary approval).

A responsible agency complies with CEQA by reaching its own conclusions on whether and how to approve the project. Guidelines §15096(a). The responsible agency consults with the lead agency and comments on draft EIRs for projects which the responsible agency would later be asked to approve. Guidelines §15096(b), (d). If the responsible agency deems the lead agency's final EIR to be inadequate for use by the responsible agency, it must either sue, be

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deemed to have waived objection, prepare a subsequent EIR if permissible, or assume the lead agency role. Guidelines §15096(e).

The City is the lead agency for the Project. If Caltrans is a responsible agency, then the City was required to include in the FEIR the information required by Caltrans. The joint Opposition argues otherwise, contending that Pub. Res. Code section 21080.4(a) and Guidelines section 15096(b)(2) provide only that the lead agency shall include "this information" in the EIR, and "this information" means the comments of responsible agencies. According to the Opposition, the City was not required to follow Caltrans' direction as a responsible agency if it included the comments in the FEIR. Opp. at 11.

This position is incorrect. As Petitioners argue (Reply at 7), Pub. Res. Code section 21080.4(a)'s plain language requires that the responsible agency "specify" to the lead agency the "scope and content of the environmental information" within the responsible agency's purview, and that is the information which "shall be included" in the EIR. There is no reason for the statute to use the word "specify" if a lead agency could ignore it. This conclusion is underscored by the remedies available to the responsible agency should the lead agency fails to follow the responsible agency's direction, which include a lawsuit, preparation of a subsequent EIR if permissible, or assumption of the lead agency role. Guidelines §15096(e). There would be no need for the responsible agency to have this list of remedies – particularly the remedy of taking over as lead agency -- if it only had a right to comment on a draft EIR. Thus, a lead agency fails to follow a responsible agency's direction at its own peril. *See* Remy, Thomas, Moose, & Manley, Guide to CEQA: California Environmental Quality Act, (11th ed. 2007) p. 45 ("[L]ead agencies *must* include in their EIRs information related to the environmental impacts that are anticipated by responsible agencies and trustee agencies as to matters within their expertise or jurisdiction.").[7]

The issue becomes whether Caltrans is a responsible agency under CEQA whose direction the City was required to follow for analysis of the Project's impact on the state freeway system. Petitioners argue that Caltrans is a responsible agency for the Project, pointing out that the City identified Caltrans as a responsible agency in the draft EIR. Mot. at 6. Specifically, the DEIR stated that Caltrans had authority to review traffic impacts on the 101 Freeway and enforce any Project mitigation measures. AR 4260.

The Opposition admits that the City treated Caltrans as a responsible agency, but contends that treatment does not make it so. The Opposition argues that the definition of a "responsible agency" requires that the agency have some discretionary responsibility for carrying out or approving a project, and Caltrans has no approval authority over the Project. *See* Pub. Res. Code §21069; Guidelines §15381. Even if Caltrans has a role in implementing mitigation measures for the Project, that does not make it a responsible agency. *See* Rominger v. County of Colusa, (2014) 229 Cal.App.4th 690, 700-01 (county's environmental review did not bar it from contending that the project was exempt from CEQA because court decides whether agency required with procedure required by law). Opp. at 11-12.

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[7] The Opposition cites to Citizens for East Shore Parks v. State Lands Commission, (2011) 202 Cal.App. 4th 549, 567-68. Opp. at 11. That case holds only that a lead agency may rely on a responsible agency's failure to provide comments after receiving notice to mean that the responsible agency had no comments to make. It does not hold that a lead agency may ignore a responsible agency's direction.

Contrary to Petitioners' position (Pet. Reply for Supp. Mot. To Augment, pp. 5-7), the City is not judicially estopped from contending that Caltrans is not a responsible agency simply because it said so in the DEIR, or in a September 9, 2013 email from Deputy City Attorney Siegmund Shyu providing Petitioners with notice of the responsible agencies so that Petitioners could notify them about their lawsuit. *See* Pub. Res. Code §21167.6.5(b), (c). Judicial estoppel is an equitable doctrine that prevents "the use of intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." The primary purpose of the doctrine is not to protect the litigants, but to protect the integrity of the judiciary. Thomas v. Gordon, (2000) 85 Cal.App.4th 113 (citations omitted). The focus is on whether a party has taken totally inconsistent positions in judicial proceedings where the prior position was successfully asserted, and the inconsistency is not the result of ignorance, fraud or mistake. Aguilar v. Lerner, (2004) 32 Cal.4th 974, 986-97. The doctrine should apply when: (1) the same party has taken two positions; (2) the positions were taken in judicial or *quasi*-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud or mistake. International Engine Parts, Inc. v. Feddersen & Co. (1998) 64 Cal.App.4th 345, 350-351. The City was not "successful" in asserting that Caltrans is a responsible agency in the DFEIR or other documents, and judicial estoppel does not apply.[8]

Moreover, Caltrans does not become a responsible agency simply because it will enforce mitigation measures created by the City. *See* Lexington Hills Assn. v. State, (1988) 200 Cal.App.3d 415, 433 (issuance by Caltrans of "encroachment permits" was not integral to timber harvesting project, merely occurred during performance of mitigation measure, and Caltrans did not have authority or duty to approve project under CEQA). *Compare* Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo, (1985) 172 Cal.App.3d 151, 174-75 (Caltrans was responsible agency because it must issue encroachment permit for construction of the project, and permit was discretionary because Caltrans can control the location and manner of encroachment).

However, there is more to Caltrans' involvement than mere enforcement of mitigations. Caltrans contended that it is a responsible agency for the Project, and the City agreed with that contention in the DFEIR through the outset of this lawsuit. This is not an issue of judicial estoppel or admission, but rather that the City agreed upon a legal framework which included Caltrans as a responsible agency for purposes of CEQA. The City cannot now deny Caltrans the role of responsible agency after extensive colloquy between the two agencies in which Caltrans played that very role. At some point in the CEQA process, the City becomes bound by the CEQA framework it adopts. *See* Genry v. City of Murrieta, (1995) 36 Cal.App.4th 1359, 1404-05 (city never considered whether to prepare supplemental EIR and consequently was bound by election to prepare only mitigated negative declaration). To conclude otherwise would impermissibly enable the City to manipulate the Project's design so as to avoid allocating discretionary decisions to Caltrans and its demands for freeway and on/off ramp traffic study.

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[8] Nor does the City Attorney's September 9 email that Caltrans is a responsible agency constitute a judicial admission. Judicial admissions apply to facts, not conclusions of law. Stroud v. Tunzi, (2008) 160 Cal.App.4th 377, 384.

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Apart from the fact that the City is bound by the CEQA framework it adopted, Caltrans is a responsible agency because it does perform a discretionary function for the Project. Both the DEIR and the Project Conditions of Approval state that Caltrans and LADOT will jointly design and approve the mitigations measures for the intersection at Argyle/Franklin Avenue and the northbound onramp to the 101 Freeway. AR 4194-95, 11685; *see* AR 22879. This design feature makes Caltrans an agency with discretionary authority for approval of an integral part of the Project (design of an onramp mitigation measure), not just the implementation of mitigation measures. Caltrans is a responsible agency for the Project.[9] [10]

The Opposition contends that the City, as lead agency, was entitled to consider and reject criticism by Caltrans so long as its reasons are supported by substantial evidence. North Coast Rivers Alliance v. Marin Municipal Water District, (2013) 216 Cal.App.4th 614, 627, 642 (lead agency could reject other agency recommendations so long as lead agency decision was supported by substantial evidence). According to the Opposition, the City considered and fully responded to Caltrans' comments, including the preparation of a second traffic impact analysis using SCAG's traffic model. This second study is substantial evidence supporting the FEIR's conclusions. Unlike the City's threshold of 150 peak-hour trips in one direction, the SCAG analysis used a more conservative threshold of 150 trips during peak hours in both directions and it still found no significant impact on freeway segments. Opp. at 9-10.

The Opposition defends the City's use of CMP rather than the HCM level of service methodology preferred by Caltrans, which measures level of service based on travel speed and duration of congestion. AR 56127. The CMP chose a LOS methodology called Intersection Capacity Utilization ("ICU") due to the need for a consistent means of measuring congestion across the County. ICU has been determined to be consistent with HCM for this purpose, and CMP does not preclude the use of different methodologies for a purpose outside the CMP. AR 56127-28. The City did not use Caltrans' TISG because it does not include thresholds of significance, and the absence of significance thresholds is an appropriate basis to evaluate environmental impacts. *See* Sierra Club v. City of Orange, (2008) 163 Cal.App.4th 523, 541 (level of service standard used in EIR). Opp. at 10. The City also studied system constraints for freeway ramps by studying the immediately adjacent intersections to numerous 101 Freeway on/off ramps. The City used LADOT methodology for this purpose, and there is no evidence that this methodology was inaccurate. Id.

The City's choice of methodology did not comply with the substance of what Caltrans required, and the City was not free to ignore it. Even the CMP expressly states that Caltrans must be consulted to identify specific locations on the freeway system for analysis. AR 11863. The City relied on the CMP for thresholds of significance, but Caltrans told the City that the congested conditions of the 101 Freeway meant that even trips below the arbitrary CMP threshold of 150 could be significant and should be analyzed using its TISG. AR 11864. The CMP also states that at a minimum the geographic area examined in the traffic study must

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[9] Petitioners also argue that Caltrans has authority for enforcing a stormwater runoff management permit that protects water quality in Ballona Creek (AR 4284), but this enforcement authority does not make Caltrans a responsible agency for traffic impacts on the Project. *See* Reply at 2.

[10] The Opposition does not argue the scope of Caltrans' authority as responsible agency, and the court need not decide whether the traffic study sought by Caltrans is outside the scope of its discretionary authority.

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include mainline freeway monitoring locations where the project will add 150 or more trips, in either direction, during peak hours; it does not say that a 150 trip threshold is always sufficient. The City was not free to reject Caltrans' instruction about threshholds. *See* AR 56281. *See* Mejia v. City of Los Angeles, (2005) 130 Cal.App.4th 322, 342 ("A threshold of significance is not conclusive...and does not relieve a public agency of the duty to consider the evidence...."); Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners, ("Berkeley Keep Jets") (2001) 91 Cal.App.4th 1344, 1380-82 (agency insufficiently considered site-specific characteristics of noise from airport in favor of standard for threshold of significance). The CMP also states that it chose ICU over HCM solely out of need for a consistent means of measuring congestion across the County. AR 56127-28. This justification – the need for a consistent measure of traffic on County streets -- is irrelevant to the evaluation of freeway traffic congestion and safety. Under these circumstances, there was no reason for the City to cling to the County's CMP to conduct its traffic analysis. The City wrongly used the CMP and its 150 trip threshold in the face of Caltrans' criticism and direction to the contrary.

Caltrans also wanted the City to use its HCM methodology to address safety issues, including queuing on off-ramps between Vermont and Highland where vehicles could back up into intersections, as well as performing a weaving analysis. Caltrans further wanted a cumulative analysis of the 101 Freeway traffic impacts from the Project, the 58 related projects in the DFEIR, and the NBC-Universal project. A freeway has three types of segments: (1) a merge/diverge segment, whether a stream of traffic combines or divides, (2) a weave segment, in which traffic streams travelling in the same direction cross paths, and (3) a basic freeway segment. AR 73441. Caltrans' HCM addresses safety issues with respect to all three types of segments (AR 22841, 11290), whereas the CMP addresses only traffic congestion. AR 56114 (CMP tracks and analyzes regional transit performance), 31503 (CMP evaluates "demand-to-capacity" for freeway impacts). The CMP has only one monitoring station between downtown and Coldwater Canyon (AR 56210) which is incapable of evaluating queuing and weaving. The City did not perform the requested analyses, merely finding that the 101 Freeway was exempt because the CMP's 150 trip threshold had not been met.[11]

The FEIR fails to analyze traffic impacts to the 101 Freeway as Caltrans directed in its role as responsible agency. As Petitioners contend (Reply at 3-4), the City's disagreement with Caltrans is a failure to proceed in the manner required by law. The City was not entitled to disagree with Caltrans, perform a study more limited than sought by Caltrans, and then rely on substantial evidence of what it did. Rather, the City was obligated to provide the information and analysis which Caltrans specified as a responsible agency should be performed. Compliance with the requirements of CEQA is "scrupulously enforced.' Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553, 564.

2. The FEIR's Assessment of Traffic Impacts Was Inadequate

Apart from its failure to follow Caltrans' direction for methodology and 101 Freeway impacts analysis, the City did not adequately analysis traffic impacts. As stated *ante*, the City relied on the CMP to conclude that the Project would not generate more than 150 additional trips

[11] Finally, the Opposition contends that Caltrans waived its objections to the FEIR when it failed to file suit under Guidelines §15096(e). Opp. at 12. True, but Petitioners did not waive their right to assert the City's failure. *See* Citizens for Open Government v. City of Lodik, (2006) 144 Cal.App.4th 865, 875.

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per day for the 101 Freeway, and this was not a significant traffic impact. AR 182. The FEIR also concluded that the freeway ramps, including the meters and weave sections on the ramps, are not the limiting factor for the roadway in the Hollywood area. AR 184.

The FEIR's mere conclusion that the ramps -- and the weaving sections on the ramps -- are not a limiting factor in Hollywood is not substantial evidence. Caltrans pointed out that ramp queuing can lead to safety issues and "without a queuing analysis neither Caltrans nor the City can determine whether traffic from the off-ramps will back up, creating an unsafe condition. AR 22843. Similarly, without a weaving analysis for both the northbound and southbound mainline segments between the nearby on/off ramps the difficulty of drivers in maneuvering could not be assessed. AR 22844. The City's only response was that its standard CMA analysis did not require these analyses. AR 186. This response did not meet CEQA's requirement of a good faith reasoned analysis in response to comment. *See* Berkely Keep Jets, *supra*, 91 Cal.App.4th at 1367; Guidelines §15151. The omission of a freeway weaving and queuing analysis was an abuse of discretion.

When Caltrans contended that the 101 Freeway's mainline segments should be analyzed, the City responded that its CMP analysis showed a less than significant 150 Freeway trips per day, and no further analysis was necessary. AR 181-82, 31791. As discussed *ante*, the use of a threshold of 150 daily trips failed to recognize Caltrans' concern that the greater the congestion, the lower the threshold of traffic needed to create an impact. AR 22848. According to Caltrans' TISG, fewer than 50 trips may have a significant impact on a freeway which operates at LOS E or F, and a full traffic study or some lesser analysis is required in that situation. AR 55811. *See* AR 22848. The 101 Freeway operates at level of service F during peak hours and the City's 150 trip threshold does not take into account this congested LOS. The additional traffic volume of 150 vehicles on the freeway is particularly important in light of weaving, queuing, and diverging movements, issues which Petitioners' consultant said can be addressed by Caltrans' HCM and not CMP. AR 11290. The City did not have substantial evidence to support its mainline freeway segment analysis.

The FEIR also did not perform an analysis of the Project's cumulative traffic impact with other projects on the ramps and mainline. Caltrans noted that the 58 projects identified in the FEIR will also add peak hour trips to the 101 Freeway, and a cumulative impact analysis was required. AR 22848. The City's sole response for not doing so was that the direct impact on the Freeway of the Project's 150 trips per day was not significant. AR 181-82. But, as Petitioners point out (Mot. at 24), this response misses the point of a cumulative impacts analysis which is to evaluate the cumulative impact of projects whose incremental impact is small. Environmental damage often occurs incrementally from a variety of small sources, and the assessment of a project's cumulative impact on the environment is a critical feature of the EIR. Los Angeles Unified School District v. City of Los Angeles, (1997) 58 Cal.App.4th 1019, 1025. Understated cumulative impacts analysis impedes meaningful public discussion and skews the decision-maker's perspective. Citizens to Preserve the Ojai v. County of Ventura, (1994) 27 Cal.App.4th 713, 729-35.

The Opposition argues that the FEIR did perform a cumulative impacts analysis because the Guidelines expressly permit a cumulative impacts discussion through a list of projects producing related impacts or a summary of projections from an adopted general plan or planning document. The Opposition contends (Opp. at 12-13) that the City conservatively did both, using a 1% growth factor (AR 2732) and discussing 58 related projects within 1.5 mile radius. AR 2733-39.

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There are several problems with the Opposition's argument. First, the FEIR did not conservatively wear a belt and suspenders as the Opposition implies. The Guidelines provide that as part of the cumulative impacts analysis the EIR may provide a list of "past, present, and future project producing related or cumulative impacts," or "a summary of projections contained in an adopted general plan or related planning document...." Guidelines §15130(b)(1). The FEIR listed 58 related existing projects for cumulative impacts analysis, and then used a growth factor of 1% to cover future unknown projects. AR 4980. Thus, the two did not overlap. Second, the 1% growth figure is not a projection in an adopted general plan or planning document; LADOT created it out of whole cloth. *See* id. This is not permissible under Guidelines section 15130(b)(1).[12] Third, the FEIR did not use the projections for a reasonable discussion of cumulative traffic impacts. *See* Guidelines §15130(b)(5).

The FEIR also did not include the NBC-Universal project in its list of related projects, even though Caltrans expressly noted that the NBC-Universal project itself will add traffic to the 101 Freeway. AR 22848. The City's sole response was that the CMP did not show more than 150 trips generated by the Project, which was below the threshold of significance. AR 181-82. This *non-sequitur* is woefully inadequate to constitute a good faith reasoned response to comment. *See* Berkely Keep Jets, *supra*, 91 Cal.App.4th at 1367.

The Opposition now argues that the FEIR was not required to include NBC-Universal as it is located 3.5 miles away from the Project, outside the 1.5 mile radius designated by the City. AR 2733. Opp. at 13.

Other projects must be included in an EIR's cumulative impacts analysis if it is "reasonable and practical" to do so. San Franciscans for Reasonable Growth v. City and County of San Francisco, (1984) 151 Cal.App.3d 61, 77. The agency may draw a geographical line for its cumulative impacts analysis if it provides a reasonable explanation for doing so. *See* Guidelines §15130(b)(3). The City provided no justification for its arbitrary 1.5 mile radius that excludes a major project from cumulative impact analysis. There appears to be no legitimate reason why the large NBC-Universal project should not have been included in a cumulative impacts analysis.[13] Exclusion of the NBC-Universal project solely because it is 3.5 miles away is unreasonable where it apparently is quite large and lies directly downstream from the Millennium Project with few on/off ramps in between.

The FEIR did not have substantial evidence to support its cumulative impacts analysis. The FEIR's traffic impacts analysis was inadequate and an abuse of discretion.

3. The City Was Not Required to Notify and Consult with CGS Prior to Circulating the DEIR

The lead agency "shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project...." Pub. Res. Code §21153(a).

Petitioners argue that CGS is a commenting agency under CEQA. Despite knowing that there was a real prospect that the Hollywood Fault crossed Project Site, the City did not notify

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[12] The DFEIR stated that the summary of projections was validated by the HCPU, but the HCPU was invalided in La Mirada and cannot be relied upon. *See* AR 2732.

[13] Petitioners are, of course, correct in arguing that the mitigations proposed in the FEIR to alleviate traffic congestion are no substitute for analysis of the traffic impacts from the Project. *See* AR 182. Mot. at 26.

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the Department of Conservation or its CGS as either a responsible agency or an agency that has jurisdiction over the Project. The State Geologist is required to delineate active earthquake fault zones, which are identified on maps. Pub. Res. Code §§ 2621.5(b), 2622. The CGS's 2010 Fault Activity map showed the Hollywood Fault across the Project site. AR 49493. The City knew seven months before the DEIR was circulated that a Hollywood Fault trace mapped by the CGS might cross the Project Site. AR 68319. When a State Geologist found out that the City Council was considering the Project, he called to express concern and wrote to explain that CGS was mapping the Hollywood Fault and its maps and reports would be completed by year-end 2013 or early 2014. AR 68408, 11885. Yet, CGS was not named as a responsible agency. Mot. at 9.

CGS is not a responsible agency because it has no discretionary authority to approve or carry out the Project. *See* Guidelines §15831. Nor is it a trustee agency over natural resources held in trust for the People. *See* Guidelines §15386. Although Petitioners principally contend that CGS is an agency with jurisdiction by law for the Project, CGS in fact has no jurisdiction over the Project. CGS has no permitting or approval authority for the Project. Instead, CGS has jurisdiction over a fact that is relevant to the Project – the investigation and mapping of earthquake zones. But jurisdiction over a relevant fact does not make CGS an agency which must be notified under CEQA. To hold otherwise would, as the Opposition points out, give CGS jurisdiction over every project in the State. Opp. at 21.

Nor do Petitioners point to any specific prejudice from the City's failure to notify CGS. The agency's environmental decision must be set aside only if the manner in which the agency failed to follow the law is prejudicial. Sierra Club v. State Board of Forestry, (1994) 7 Cal.4th 1215, 1236. While the failure to give notice to a responsible or trustee agency is presumed to be prejudicial, if a department appears at the hearing and voices no concerns there would be no prejudice. Fall River Wild Trout Foundation v. County of Shasta, (1999) 70 Cal.App.4th 482, 492. In this case, CGS did not appear at the City Council hearing, but its State Geologist did explain that CGS' forthcoming determination of the Hollywood Fault could bear on the Project. It is not clear what more CGS would have said.

The City was not required to give notice to CGS.

4. The Ambiguity of the FEIR's Project Description

a. Governing Law

The EIR must describe the project, including (a) a map of the project's precise location and boundaries, (b) a statement of objections sought by the proposed project (c) a general description of its technical, economic, and environmental characteristics, (d) a statement of the intended uses of the EIR. Guidelines §15124.

Only the four listed items are mandatory. California Oak Foundation v. Regents of the University of California, ("California Oak") (2010) 188 Cal.App.4th 227, 269-70. The project description should not "supply extensive detail beyond that needed for evaluation and review of the [project's] environmental impact." Guidelines 15124; California Oak, *supra*, 188 Cal.App.4th at 269-70. The critical inquiry is whether the EIR' s project description "contains sufficient detail to permit reasonable and meaningful environmental review...." California Oak, *supra*, at 272. CEQA also does not require the project description to properly assess environmental impacts -- only generally to describe the project's own environmental characteristics. *See* Dray Creek Citizens v. County of Tulare, ("Dray Creek") (1999) 70 Cal.App. 4th 20, 28 ("general" means only the main features and not details or particulars).

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An accurate, stable, and consistent project description is the *sina qua non* of an informative and legally sufficient EIR." County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 193. A shifting project description may confuse the public and agency decision-makers, vitiating the EIR's usefulness as a vehicle for intelligent public participation. County of Inyo, *supra*, 71 Cal.App.3d at 197. The description should be sufficiently detailed to provide a foundation for a complete analysis of environmental impacts. Id. at 192-3. The description should include all project components. *See* Santiago County Water District v. County of Orange, (1981) 118 Cal.App.3d 818, 829-30 (EIR for mining operation should have included extension of waterlines to serve the mine). It must apprise the parties of the true scope of the project. *See* San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, (1994) 27 Cal.App.4th 713, 731-32 (EIR's project description failed to include sewer expansion which the EIR acknowledged would be required as part of the development); San Joaquin Raptor Rescue Center v. County of Merced, (2007) 149 Cal.App.4th 645, 672-83 (EIR's project description of a mining expansion project was inadequate because it inconsistently stated that no increase in mine production was being sought, yet also stated that the real party would be permitted to increase production).

An "EIR cannot be faulted for not providing detail that, due to the nature of the project, simply does not now exist.. .Nor have the courts required resolution of all hypothetical details prior to approval of an EIR." Citizens for a Sustainable Treasure Island v. City and County of San Francisco, ("Treasure Island") (2014) 227 Cal.App.4th 1036, 1054.

In Treasure Island, the court rejected claims that the EIR for the redevelopment of a former Naval base in the San Francisco Bay lacked sufficient detail about the project and should have been a program EIR, not a project-level EIR. 227 Cal.App.4th at 1043. The project description was for a mixed-use community with up to 8,000 residential units, 140,000 square feet of commercial and retail space, 100,000 square feet of office space, 500 hotel rooms, 300 acres of parks, playground and open space, and a school. The construction and build out would be phased over a 20-year period. Id. at 1044. The court noted that the level of detail required for an EIR is driven by the nature of the project and what is reasonably feasible; an EIR on a construction project will necessarily be more detailed in the specifics of the project than adoption of a local general plan. Id. at 1051 (citing Guidelines §15146).

The court held that the project description was accurate and stable, and not merely a "conceptual land use map" as argued by the petitioners. The EIR made an extensive effort to provide meaningful information about the project while providing flexibility to deal with changing conditions affecting final design over a 20 year period. Id. at 1053. The project provided for new zoning that identified permitted uses and development standards within each district and also a set of binding design standards that included both fixed elements, such as street layouts, and conceptual elements, such as shapes of new buildings or specific landscape designs. Id. The court noted that many project features necessarily would be subject to future revision and quite likely would be the subjects of supplemental environmental review before the final project design was implemented. Id. at 1054. The petitioners claimed that "because the EIR does not anticipate every permutation or analyze every possibility, the project description is misleading, inaccurate and vague." Id. The court rejected this claim, finding that the basic characteristics of the project remained, accurate, stable, and finite throughout the EIR process.

Id. at 1055. As an informational document, the project description provided sufficient information for the public and reviewing agencies to evaluate the project's environmental impacts and also provided the required "main features" of the project. Id.

b. The Project Description

The City's FEIR is modeled after the EIR in Treasure Island. The Project Description states that the Project is for a mix of land uses, including "some combination" of residential units, hotel rooms, offices, restaurants, a health and fitness club, and retail. AR 4082. The DEIR describes a LUEP that would provide flexibility to Millenium to adjust the type and density of land uses for the Project, allowing Millennium to request and obtain a transfer of land uses before development of any Project phase so long as it stays within the FAR and trip cap of 1498 new peak hour vehicle trips per day stated in the EIR (AR 13789-90). AR 10987-90.

The DEIR provides for Development Regulations for the Project that are incorporated in the Project approvals with contain standards for the Project's development that would prevail over zoning or land use regulations in the LAMC. AR 845-904, 853. The Development Regulations require that final Project design meet mandatory standards for building heights (AR 859), towers (AR 879), density (FAR) (AR 858), building massing (AR 861), grade level (AR 875), storefronts (AR 877), yards (AR 873), open space (AR 884-86), street walls (871), passageways (AR 887-89), landscaping (AR 892-94), lighting (AR 895-96), parking (AR 897-98), bicycle parking (AR 899-900), and signage (AR 901). Conceptual design drawings depict maximum allowed development envelopes. AR 863-70.

The DEIR identifies three potential development scenarios: the Concept Plan, a Commercial Scenario, and a Residential Scenario. The Concept Plan represents one possible scenario in which Millennium would build approximately 492 residential units (700,000 square feet of floor area), 200 luxury hotel rooms (167,870 square feet), 215,000 square feet of office space (including the existing 114,303 square-foot Capitol Records), 34,000 square feet of food and beverage use, 35,100 square feet of fitness center/sports club, and 15,000 square feet of retail. AR 4106.

The Commercial Scenario describes the most environmental impactful development scenario possible for those resource areas where commercial uses dictate the severity of impacts: air quality, greenhouse gases, noise, water demand, wastewater flow, energy demand, police and fire services, and traffic. AR 4237. The Residential Scenario describes the most impactful development scenario possible for those resource areas where residential uses dictate the severity of impacts: population and housing, schools, parks, libraries, parking, and solid waste generation. AR 4238-39. The DEIR uses these two scenarios in determining the maximum environmental impacts in each area. The total amount of specific development – residential, hotel, office, retail/food and beverage, and fitness center/sports club -- may increase or decrease as long as long as the maximum impacts in each issue area are not exceeded and the total 6:1 FAR is not exceeded. AR 4239-41. *See also* Opp. at 26-27.

c. Merits

Petitioners contend that the Project Description is neither stable nor finite because the actual mix of features for the Project Site is unknown, precluding an accurate identification and analysis of all environmental impacts from the Project actually built. Mot. at 10-11. Petitioners

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describe the Project as an "amorphous envelope" of development parameters limited by a set of maximum environmental impacts. Nothing in CEQA permits the substitution of an impacts envelope for an actual project description, and a Project that does not provide an actual project but only "illustrative scenarios" pushes the flexibility permitted by CEQA for project descriptions beyond reasonable. Reply at 11-12.

The court agrees. An EIR should be prepared with sufficient information for the public and decision-makers to make an intelligent decision taking into account environmental consequences. The EIR's sufficiency depends on what is reasonably feasible. Guidelines §15151. The level of specificity of an EIR is determined by the nature of the project and the "rule of reason." Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, (1993) 18 Cal.App.4th 729, 741-42. That degree of specificity "will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Guidelines §15146. The ultimate decision whether to approve a project is a nullity if based upon an EIR that does not provide decision-makers, and the public, with the information about the project required by CEQA. Santiago County Water District v. County of Orange, ("Santiago County Water") (1981) 118 Cal.App.3d 818, 829.

The degree of specificity required in an EIR will correspond to the degree of specificity in the underlying project. Guidelines §15146. A construction project will necessarily have a more detailed EIR than that for a general plan or zoning ordinance because the effects of a construction project can be predicted with greater accuracy. Guidelines §15146(a). The use of new zoning that identifies permitted uses and also a set of binding design standards that includes both fixed elements and conceptual elements, such as shapes of new buildings or specific landscape designs, is permissible where necessary. Treasure Island. But an EIR serves both an informative and substantive purpose, and a developer must present an accurate and stable picture of the project so that the public and decision-makers can decide whether its environmental consequences are outweighed by its public benefits. City of Santee v. County of San Diego, (1989) 214 Cal.App.3d 1438, 1454.

The FEIR provides a blurred view of the Project, not the definite and stable view required under CEQA. The LUEP, Development Regulations, and Q Condition No. 1 collectively approve an envelope of potential residential, commercial, retail, and office projects which will not have more than a maximum design mass and height and that will create no more than maximum levels of air pollution and traffic impacts. CEQA requires the project description to describe the project's characteristics so that its environmental impacts may be assessed. Dray Creek, *supra*, 70 Cal.App. 4th at 28. Analyzing a set of environmental impact limits instead of analyzing the environmental impacts for a defined project is not consistent with CEQA, which demands that "the defined project and not some different project must be the EIR's bona fide subject." Burbank-Glendale-Pasadena Airport Authority v. Hensler, (1991) 233 Cal.App.3d 577, 592.

There are times when a project description setting forth only a project's physical parameters and setting out maximum permissible environmental impacts can be reasonable – most particularly where other conditions make specificity impossible. Thus, in Treasure Island, the developer had plans to build over a 20-year period a large-scale development on an island. The island was contaminated by hazardous material which required cleanup, and the developer

could not be sure when the island would be available for development. The Treasure Island court expressly cited Guidelines section 15146 for the proposition that the specificity required depends on the underlying project, and concluded that the existing conditions and long-term nature of the project prevented disclosure of detail that does not now exist. 227 Cal.App.4th at 1054. The court permitted an EIR based on new zoning that identified permitted uses and development standards that included both fixed elements, such as street layouts, and conceptual elements, such as shapes of new buildings or specific landscape designs. The court described the EIR as making an extensive effort to provide meaningful information about the project while providing flexibility. The court further noted that many of the project's features would be likely subjects of supplemental review before a final design was implemented. Id.

These circumstances have no application to Millennium's Project. There is no 20-year build out of a site containing hazardous substances or other external variables that makes the nature and timing of development unknown and unknowable. Nor is there any planned supplemental environmental review for the Project. Where a construction project is not limited by external conditions that create great uncertainty, there is no reason for a project developer not to be specific about project details. The public and decision-makers should know whether the project will contain any housing, any retail, any commercial, any restaurant, any health club, and if so, how much. They should also know whether it will have multiple tall buildings and the building footprint, all for purposes of environmental analysis. *See* Guidelines §15146(a).

The Millennium FEIR does not rely on an external condition -- such as a hazardous cleanup or a long-term development plan with many unknown variables outside Millennium's control -- to provide an ambiguous Project Description. Nor does the FEIR justify the ambiguity by anticipating further environmental review upon final Project design. Instead, the Opposition's sole excuse for not providing a clear and unambiguous Project Description are the "changing conditions and unforeseen events" that could possibly impact the Project. Opp. at 25. While CEQA does not require a project to be defined down to the last detail, Millennium's uncertainty about market conditions or the timing of its build-out is an insufficient ground for the ambiguous and blurred Project Description. The public and decision-makers for the Project are entitled to know what the Project will look like after Millennium makes that decision so that the Project's description can form the foundation of the environmental analysis. The EIR's project description must provide sufficient information about the project for the public and reviewing agencies to evaluate the project's environmental impacts. Treasure Island, *supra*, 227 Cal.App.4th at 1055. An EIR that does not provide decision-makers, and the public, with adequate information about the project fails as an informational document. Santiago County Water, *supra*, 118 Cal.App.3d at 829

Additionally, the Project essentially defers a portion of the environmental impacts analysis. The environmental assessment of the defined project must be performed at the earliest possible stage, and certainly in the EIR. *See* Sundstrom v. County of Mendicino, (1988) 202 Cal.App.3d 296, 306-08. As Petitioners argue, when a project faces uncertainty over several specific project alternatives, the EIR typically evaluates the environmental impacts of each specific project alternative. Deferred environmental evaluation generally is permitted only for mitigation measures, and even there only where obtaining more detailed useful information on the topic is meaningfully impossible at the time of the EIR, and the information is not of

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overriding importance to determining whether to proceed with the project. Riverwatch v County of San Diego, (1999) 76 Cal.App.4th 1428, 1448 (deferral of precise detail of mitigation measure dependent on yet-to-be performed Caltrans study did not undermine EIR's conclusion that the impact could be mitigated).

Although the FEIR limits the Project to a maximum environmental impact in each issue area, it does not explain how it will be determined that the maximum impacts will not be exceeded when the Project is finally designed and built. The LUEP permits Millennium to obtain a transfer or change of uses within the Project, and the Planning Director may approve that request if the submission reasonably demonstrates that the change is consistent with the trip cap and does not exceed the maximum environmental impacts identified in the EIR. AR 13789. But how will the Planning Director make that determination for changing the Project and using what criteria?[14] Since no additional CEQA review will be required to ensure that a change sought by Millennium is within maximum environmental issue limits, and no public input will be permitted, the FEIR essentially defers the environmental assessment of the Project and substantively fails to ensure that the finally designed Project will not be approved without all necessary mitigations of environmental harm.

Petitioners admit that a LUEP may be acceptable where it permits a developer to choose among specifically defined scenarios, each of which is fully analyzed in the EIR, the Millennium LUEP makes this impossible. Petitioners give an example of the FEIR's reliance on a reduction in traffic because some residents will enjoy Project facilities internally and defer making a trip outside (AR 4939-41, 3263-64), but there is no assurance that the facilities will be constructed in a manner that would result in the anticipated internal trip captures. *See* AR 31600. Petitioners provide a second example that the driveway locations are merely hypothetical since the Development Regulations permit "parking, open space, and related development" to be located anywhere within the Project Site. AR 858. As a consequence, traffic analysis of driveway locations and their impact is impossible. Mot. at 12.

The Opposition tries to rebut Petitioners' argument that the driveway locations are merely hypothetical, noting that the FEIR provides that the driveways specifically will be located along Ivar and Vine and placed pursuant to LADOT standards. AR 2724-25. The Opposition argues that the traffic study contains the specificity to assess traffic impacts of these locations. Opp. at 27. This fact does not undermine Petitioners' point that the driveway locations are subject to change.[15]

The CEQA process is intended to provide the fullest information reasonably available on which the decision-makers and the public can rely in determining whether to start a project.

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[14] Although Petitioners raised this issue (Mot. at 11, n.6), the Opposition does not address it.

[15] The Opposition also contends that Petitioners are mistaken about internal trip captures. The FEIR addresses trip capture and "pass-by" trip reductions based on the most traffic-intensive development scenario, meaning that fewer trips will be permitted than otherwise. The FEIR translates use-specific trip generation into general trip generation rates based on any use. Regardless of the final design, these general rates will apply to ensure the total trips remain below the cap. Opp. at 27-28. Petitioners do not reply to this confusing point.

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Natural Resources Defense Council v. City of Los Angeles, (2002) 103 Cal .App.4th 268, 271. An EIR furnishes both the road map and the environmental price tag for the project so that the decision maker and the public both know how much they and the environment will have to give up in order to take that journey. Id. By approving an EIR with an ambiguous Project description which defers some portion of the environmental analysis, the City failed to act in accordance with law. CEQA's informational and substantive requirements have been violated and the EIR and the entitlements it purports to support must therefore be vacated.

d. The Q Condition

Petitioners argue that the Project's Q Condition of Approval No. 1 provides Millennium even more latitude to redesign and reconfigure the development than yielded by the ambiguous Project Description.

Q Condition No. 1 provides:

> "The use of the subject property shall be limited to those uses permitted in the Land Use Equivalency Program, attached as Exhibit D **or** as permitted in the C2 Zone as defined in Section 12.16.A of the LAMC." AR 11651 (Emphasis added.)

Petitioners argue that, on its face, Q Condition No. 1 permits Millennium to choose from any of the long list of land uses expressly permitted in the C2 zone. None of these uses or their environmental impacts were disclosed and analyzed in the FEIR, and none had appropriate mitigation imposed. Petitioners specifically objected to this Q Condition on the grounds that Q Conditions are supposed to restrict uses on a project beyond those required by a particular zoning law and were created to address the situation where a developer obtains a zoning change and then switch plans to build a project also authorized by that zone. Yet, Q Condition No. 1 expands Millennium's right to develop for uses that have not been disclosed. AR 11168-69. Mot.at 13.

The Opposition explains that the Project's central entitlement is the Ordinance, which rezoned the property from C4 to C2 commercial – a zone change that was necessary for the health club -- and imposed the Development Regulations. The Project is governed by the Development Regulations and the LUEP, both of which are incorporated into the Ordinance. The Q Conditions, which are zoning provisions enacted through the Ordinance, were added to restrict Millennium's use of the property within the C2 zone. *See* LAMC §12.32.G(2)(a). Opp. at 29.

The Opposition acknowledges the plain language of Q Condition No. 1, but argues that the City's intent in imposing Q Condition No. 1 was not to permit any use listed in the C2 zone. Instead, the LUEP defines the uses which Millennium is permitted to develop, if otherwise permitted on the C2 zone. Those uses must stay within the identified environmental maximum impacts and the Development Standards and Millenium's compliance will be verified and enforced by City Planning. Q Condition No. 1 must be read as a whole with the LUEP use restrictions and environmental impact caps (the LUEP is incorporated into Condition No. 1), and the requirements of the Development Regulations. Opp. at 29-31. Under familiar principles of statutory construction, Q Condition No. 1 must be interpreted with the LUEP and the

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Development Regulations to "impose use and development limitations on the Project." Opp. at 32.

The construction of ordinances is subject to the same standards applied to the judicial review of statutory enactments. Department of Health Services of County of Los Angeles v. Civil Service Commission, (1993) 17 Cal.App.4th 487, 494. In construing a legislative enactment, a court must ascertain the intent of the legislative body which enacted it so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, ("Orange County") (1991) 234 Cal.App.3d 833, 841. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County, *supra*, 234 Cal.App.3d at 841. The various parts of a statute must be harmonized by considering each particular clause or section in the context of the statutory framework as a whole. Lungren v. Deukmejian, (1988) 45 Cal.3d 727, 735. If a statute is ambiguous, the construction given it by the agency charged with its enforcement is entitled to consideration if such construction has a reasonable basis. Ontario Community Foundations, Inc. v. State Bd. of Equalization, (1984) 35 Cal.3d 811, 816.

In effect, the Opposition contends that the language of Q Condition No. 1 should be interpreted to limit the uses of the property to those uses permitted by the LUEP **and** by C2 zone. If a use is not permitted by both, Millennium may not put the property to that use. The problem with the Opposition's interpretation is that it runs contrary to the plain meaning of the word "or" in Q Condition No. 1, which in context means "either A or B". There is no ambiguity on which the court can rely to justify the City's interpretation.

Even if *arguendo* Condition No. 1, the LUEP, and the Development Standards collectively constitute a statutory scheme which should be collectively harmonized, that harmonization is easily done. Q Condition No. 1 addresses property use. The Development Standards concern building design, and do not address the use to which the property is placed. The LUEP contains use limitations, but Condition No. 1 places those use limitations in the alternative with uses in the C2 zone. Thus, the three elements are easily harmonized.

Petitioners objected to the language of Q Condition No. 1, and the City ignored their objection. The court cannot rewrite the Q Condition No. 1 now. It means what it says, and it provides Millennium greater latitude to redesign and reconfigure the Project in areas that have not been subjected to environmental analysis. This is a failure to act in accordance with the requirements of law.

5. Seismic Review

a. Petitioners' Argument

Petitioners acknowledge that the FEIR adequately analyzed seismic issues, and argue that the City failed to disclose pertinent environmental information, failing to meet CEQA's mandate that the public be equally informed as the agency. *See* Laurel Heights, *supra*, 47 Cal.3d at 404. Mot. at 14; Reply at 18.

Petitioners point out that the Hollywood Fault is considered active, and therefore a potential hazard for catastrophic rupture. Petitioners' consulting geologists identified, and the 2010 CGS Map showed, the Hollywood Fault crossing through both sides of the Project Site.

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AR 11542-43; RL 33497-98. Although the City's ZIMAS mapping did not show the Hollywood Fault as crossing the Project Site, LADBS staff noted that a City geologist met with Millennium and discussed the fact that the Fault potentially crossed the property. AR 68257. In recommending a Fault Report, the City geologist stated that the Hollywood Fault "appears to exist in the vicinity of the subject site." AR 65566-68.

The City's Initial Study noted the potential of a significant impact from rupture of a known earthquake fault, and stated that the EIR will provide additional analysis. AR 680-81. A November 2011 report was prepared as a technical appendix to the EIR (AR 29824), but was never included in the FEIR. The report claimed that the Project Site is not located in a Fault Rupture Study Area ("FRSA"), and site-specific fault studies were not performed or required. AR 29829. But Petitioners contend that Exhibit 4 to the November 2011 report shows the Project's eastern portion crossing through the red footprint of the FRSA. Wright Decl., Ex.1.

Petitioners note that in March 2012 LADBS acknowledged the need for a limited fault investigation based on a CGS Hollywood Fault trace map. AR 29988. LADBS and Millennium representatives agreed that this limited investigation would include only the Project's western portion, not the eastern portion identified in Exhibit 4, and would be deferred until the buildings were designed. RL 6677-78.

The Planning Department reviewed a proposed DEIR which did not have the November 2011 report, and instead included a May 2012 report prepared by Millennium's expert. The May 2012 report was identical to the November 2011 report except that Figure 4 now showed the entire Project Site outside the FRSA boundary and a bolded sentence was deleted. AR 1385. Petitioners conclude that the May 2012 report was deliberately rigged to avoid disclosure of the Project Site within the FRSA. Mot. at 18.

The May 2012 report was attached as a technical appendix to the DFEIR which was released by City Planning staff on October 25, 2012 without waiting for, or without knowing about, the limited Fault Report that Millennium's expert was preparing. As a result, the DFEIR stated that the Hollywood Fault was 0.4 miles away from the Project Site and included little seismic analysis.

Not until the November 2012 Fault Report did Millennium or the City change its position. The Fault Report repeated the statement that the Hollywood Fault was 0.4 miles away, but acknowledged that the City had required a limited investigation because the 2010 CGS map showed the Hollywood Fault to be within 500 feet of the Project Site. The Fault Report was never included in the FEIR and never released to the public. Although the City's information potentially showed that the Project Site crosses the Hollywood Fault, the FEIR does not disclose or discuss the 2010 CGS Map. Mot. at 15. The City should have recirculated the DEIR with the Fault Report because it constituted significant new information. Pub. Res. Code §21005(a); Guidelines §§ 15088.5, 15144.

Petitioners conclude that the failure to ensure that the public knew about the seismic issue was an abuse of discretion and the DFEIR's reliance on Figure 4 to show the Project as outside the FRSA was clearly erroneous. Mot. at 19-20.

b. <u>Merits</u>

The Opposition seeks to debunk Petitioners' conspiracy theory that the City and Millennium worked to suppress the fact that the Project is located in a state-designated fault zone and in a City-designated FRSA. Opp. at 18-20.

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Even if the Opposition does not successfully do so, the court agrees that no further disclosure about the location of the Project Site's proximity to the Hollywood Fault was required. Petitioner's theory of non-disclosure is based upon (1) the FEIR's failure to include the Fault Report, which stated that the Hollywood Fault was 0.4 miles away from the Project Site, but acknowledged that the 2010 CGS map showed the Hollywood Fault to be within 500 feet, and (2) the fact that the May 2012 report, which was included in the DEIR, attached a Figure 4 which showed the entire Project Site outside the FRSA boundary and deleted a bolded sentence.

Figure 4, the 2010 CGS map on which Petitioners rely to show the Hollywood Fault traversing the Project Site, is not a reliable document. *Compare* Wright Decl., Ex.1 *and* AR 1385. First, it is not an official CGS fault map. The 2010 map is a "Fault Activity Map" prepared for CGS's 150th anniversary and expressly states that it is "not intended to replace or supersede the Official Maps of Earthquake Fault Zones -- the location of fault traces shown should not be substituted for site-specific fault rupture investigations[.]" AR 49493. Second, a cursory review of the 2010 CGS map reveals that it is a low-resolution, non-scalable, map of the entire state of California. Id. It is not something anyone can rely upon to show fault boundaries.[16]

As for the contention that the May 2012 report was deliberately rigged to avoid disclosure that the Project Site was within the FRSA, the Opposition contends that the exhibit in the May 2012 report differs from that in the November 2011 report only because of a cut and paste from a graphic in the City's 1996 Safety Element. AR 47303. Opp. at 20. Whether or not the accusation of a doctored exhibit is true, it is irrelevant. The Initial Study clearly states that the Project Site is adjacent to, but not within, a City-designated FRSA. The DEIR said that the Hollywood Fault is 0.4 miles away. AR 4591, 4595. A not-to-scale exhibit showing differently is immaterial. AR 680.

Petitioners nonetheless contend that the May 2012 report attached to the DEIR is misleading because at all times the public was told that the Hollywood Fault trace was 0.4 miles away when LADBS actually regarded it as within 500 feet. If LADBS required a fault investigation because of the 2010 CGS map, the public was entitled to know about this same information. The Fault Report continued the City's position that the Hollywood Fault was 0.4 miles away from the Project Site, but at least acknowledged that the 2010 CGS map showed the Hollywood Fault to be within 500 feet. This should have been disclosed. Mot. at 19.

The Opposition argues that the Fault Report was prepared by Millennium's consultant for purposes of the VTTM under LAMC section 17.05U. LADBS acted with care by requiring a limited fault investigation despite the fact that the Project Site was not in a fault zone or FRSA, and did so because the Hollywood fault trace was less than 500 feet away. AR 29876. The Fault Report concluded that "active faulting is not present within the limits of our investigation within the Site...." AR 29875. The Fault Report was approved by LADBS for purposes of the VTTM. AR 29810-11. Opp. at 15-16.

As Petitioners reply, the VTTM process cannot be separated from the CEQA process, and the City's approval of the VTTM by itself required CEQA compliance. Pub. Res. Code

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[16] Although the court has declined to judicially notice Petitioners' Exhibits C and D, which purport to show the Project Site within the Hollywood Fault, the Opposition correctly argues that if CGS released for the first time in November 2014 a map showing the Project Site in the Hollywood Fault Zone, how is it possible that CGS's 2010 map already placed the Project in a fault zone? Opp. at 19.

§21080(a); Govt. Code §66474.01. CEQA is essentially an environmental full disclosure statute and the City cannot silo information about seismic issues from the EIR. See Rural Landowners Assn. v. City Council, (1983) 143 Cal.App.3d 1013, 1020. Reply at 15-16.

Nonetheless, the FEIR adequately addressed seismic issues. The Opposition shows, and Petitioners do not dispute, that the City treated the Project as if it were in an earthquake zone. The DEIR included an adequate discussion of potential impacts from fault rupture (AR 4589-4602) and a 48-page Preliminary Geotechnical Engineering study which showed no evidence of faulting. AR 8212-59. Despite the fact that the Hollywood Fault was only proximate, the City adopted mitigation measures to ensure seismic safety, including construction of the Project in accordance with seismic standards and a requirement for final geotechnical engineering report prior to issuance of building or grading permits. *See* Oakland Heritage Alliance v. City of Oakland, (2011) 195 Cal.App.4th 884, 904 (upholding similar mitigation measures); California Oak, *supra*, 188 Cal.App.4th at 264 (upholding EIR for project in earthquake zone that required further testing before development of site).

Nothing in the Fault Report supports Petitioners' argument that it should have been included in the FEIR. As the Opposition argues, the DEIR already contained a May 2012 preliminary geotechnical study prepared by Millennium's expert claiming that the Project Site is not located in a FRSA, and that site-specific fault studies were not required. AR 29829. The Fault Report concluded that active faulting is not present at the Project Site, and this conclusion is consistent with the May 2012 report. The City treated the Site as if it was in a FRSA, and the FEIR contained a discussion of seismic issues, a preliminary geotechnical report, and mitigation measures. It did not have to include the Fault Report prepared for LADBS and the VTTM showing no active faulting. *See* California Oak, *supra*, 188 Cal.App.4th at 265 (seismic study prepared for compliance with Alquist-Priolo was not required to be included in EIR).

Petitioners argue that case law supports the exclusion of a particular document from the record where the discussion of an environmental impact is present in the EIR, but not where a crucial area of environmental impact has been omitted. Reply at 18.

Perhaps so, but the FEIR did not omit a crucial area of environmental impact. The City performed the proper environmental analysis, consistently stating that the Hollywood Fault was 0.4 miles away. The mere fact that the Fault Report acknowledged that the City required a limited investigation because the 2010 CGS map showed the Hollywood Fault to be within 500 feet of the Project Site, not 0.4 miles (2112 feet), does not mean the FEIR fails as an informational document. As the Opposition contends, the 2010 CGS map is unreliable and unofficial. The City required the Fault Report in order to be cautious and treat the Project Site as if it were in a FRSA, and the Fault Report confirmed a lack of active faulting. The mere fact that the FEIR did not disclose the reason why the City required a Fault Report is insufficient to cause the FEIR to fail as an informational document.

Because the Fault Report did not contain significant new information showing new or substantially more severe impacts, recirculation was not required. *See* Guidelines §15088.5(a).[17] Recirculation is not required where the new information merely clarifies or amplifies information

[17] Petitioners argue that the Opposition does not cite to any finding or evidence that recirculation is not required, but they bear the burden of showing that it was. *See* Mot. at 19.

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in the EIR. Guidelines §15088.5(b). *See* Treasure Island, *supra*, 227 Cal.App.4th at 1063-64 (court must defer to decision not to circulate where it is supported by substantial evidence).[18]

6. Fire and Protective Services

Petitioners contend that the FEIR relied on inaccurate data concerning the Project's impacts on fire safety and services. The FEIR acknowledged that under CEQA Guidelines Appendix G a significant environmental impact occurs where a project causes substantial adverse physical impacts associated with new or improved government facilities in order to maintain acceptable service rations, response times, or other performance objectives for fire protection. AR 4804. The Millennium Project's impacts would be significant "if the project requires the addition of a new fire station or the expansion, consolidation, or relocation of an existing facility to maintain service." AR 4805. The FEIR concluded that the Project would not require the addition or expansion of a fire station to maintain service, and therefore no significant impacts on this issue area. AR 4806.

LAFD's preferred response time threshold for emergencies is five minutes or better 90% of the time. AR 4800. The FEIR noted that Fire Station 27, which houses a truck company, is 0.7 miles from the Project Site and Fire Station 82, which houses an engine company, is 0.8 miles from the Project Site. AR 4807. Consistent with Fire Code section 57.09.06, this proximity was sufficient to meet the response time requirement. Additionally, the average response times for Fire Stations 27 and 82 are less than five minutes based on data supplied by LAFD for July 5, 2011-December 14, 2011. AR 4807-08.

Petitioners criticize this conclusion as repudiated by another City official. The City Controller's May 2012 audit revealed that over 1/3 of the 1.9 million reported emergency incidents either coded unclearly as either emergency or non-emergency at the discretion of dispatchers. Therefore, the audit was unable to verify that LAFD had met its 90% goal for emergency response times. Pet. Mot. to Augment, Ex. 2. The DEIR acknowledged the Controller's audit, mentioning it "for information purposes only." AR 4800. LAFD subsequently stated that its prior reporting data should not be relied upon until properly recalculated and verified. AR 11187. Consequently, Petitioners argue that the City wrongly relied on the inaccurate data. Reply at 20.

Petitioners ignore the proximity of Fire Stations 27 and 82 to the Project Site. Fire Code section 57.09.07 requires response distances in compliance with Table 9-C, which in turn permits a maximum response distance of 1 ½ miles for engine and truck companies in high density resident and commercial neighborhoods. Fire Stations 27 and 82 are within those distances. The FEIR also noted five other stations nearby, the Project would generate revenue that could be applied to new fire facilities, emergency access would be adequate, and LAFD has experience navigating these streets. AR 313, 4808. Under these circumstances, the Controller's audit discrediting LAFD community-wide response time data does not undermine the FEIR's

[18] The City Council clearly understood that LADBS treated the Project as if it was in an earthquake zone, and the City Council approved an amending motion which imposed a condition of a comprehensive geotechnical report prior to issuance of any grading or building permit. AR 13791-92, 11643.

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conclusion that response times to the Project area will meet the standard of five minutes or less 90% of the time.[19]

It is also true, as the Opposition argues and Petitioners admit, that Appendix G only requires analysis of whether new or modified facilities will be required, not response times.[20] The City concluded that no new facility will be required. AR 4806. Its decision that there is no significant impact from this environmental issue is supported by substantial evidence.

7. The Invalidated Hollywood Community Plan Update

a. The FEIR's Reliance on the HCPU

The HCPU governed the Project Site at the time of the City Council's approval. Like the City's other community plans, the HCPU was an integral part of the General Plan, and formed the General Plan's state law-mandated land use element for the Project area. Govt. Code §§ 65300, 65302(a). The City thus had to make, and did make, findings in the DEIR that the Project was consistent with the HCPU. AR 4689-4700. The FEIR's mitigations also relied on the HCPU.

Following the City Council's approval of the Project, the superior court in La Mirada invalidated the entire HCPU. Pet. RJN, Ex. G. The City elected not to appeal the decision, and rescinded its adoption of the HCPU. Pet. RJN, Ex. H. Since consistency with a general plan or one of its elements is required for any portion of local government land use, the absence of a valid general plan or its valid relevant elements precludes enactment of actions, including approval of entitlements. Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal.App.3d 1176, 1184.

Petitioners argue that the City's land use consistency findings for the Project collapsed when the HCPU was invalidated and rescinded. Mot. at 29-30. The HCPU promoted high-intensity, mixed use development near transit stops, and had goals and policies custom-tailored for the Project. Because the Project approvals cannot be consistent with an invalid HCPU, the Project approvals are null and void. Mot. at 31.

This argument may be dealt with summarily. The FEIR acknowledged that the HCPU was subject to legal challenge, and therefore it analyzed the Project's consistency with both the HCPU and the original 1988 Hollywood Community Plan ("1988 HCP"), which became operative after the City rescinded the HCPU. *See* AR 24045, 24069-70. The Land Use Planning Section of the DEIR clearly states that the Project does not depend on the HCPU. AR 28213-78. This section provides the separate, parallel consistency analysis for both the 1988 HCP and the HCPU. Table 1V.G-3, analyzes the Project's consistency with the 1988 HCP. AR 28248. Table 1V.G-4 then analyzes the Project's consistency with the HCPU. AR 28249-60. The DEIR concludes that the Project is "consistent with the goal and policies of the 1988 Community Plan and the Community Plan Update and thus would not result in conflicts with local plans and policies." AR 28260. Because the Project is consistent with both plans, the FEIR finds land use consistency impacts to be less-than-significant under either plan. AR 28273.

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[19] Petitioners also argue that the FEIR's response time analysis does not include the additional 19,000 daily trips generated by the Project. Mot. at 28. Not so. This issue was addressed in the FEIR's discussion of cumulative impacts of increased residents, households, and employees on fire protection services in the Project area. AR 4813.

[20] Petitioners state that the issue of whether emergency response times are themselves an impact which must be assessed is currently before the California Supreme Court. Reply at 19.

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A city council's determination that the project is consistent with its general plan carries a strong presumption of regularity. Sequoyah Hills Homeowners Assn. v. City of Oakland, (1993) 23 Cal. App. 4th 704, 717. The foregoing evidence satisfies CEQA's land use consistency requirement and state law.

Moreover, the court agrees with the Opposition (Opp. at 36) that Petitioners waived their land use consistency argument by failing to discuss the FEIR's reliance on the 1988 HCP. When a petitioner challenges an administrative decision as unsupported by substantial evidence, it is the petitioner's burden to demonstrate that the record does not contain sufficient evidence to support the agency's decision. State Water Resources Control Board Cases, (2006) 136 Cal.App.4th 674, 749. A recitation of only the part of the evidence that supports the petitioner's position is not the "demonstration" contemplated by this rule. If a petitioner contends that some issue of fact is not sustained, the failure to set forth in his brief all the material evidence on the point and note merely his own evidence constitutes a waiver. Id. (quoting Foreman & Clark Corp. v. Fallon, (1971) 3 Cal.3d 875, 881.

Petitioners have not met their heavy burden of proving that the City's land use consistency findings for HCP were arbitrary and capricious.

b. Compliance with the La Mirada Judgment

Petitioners further argue that the La Mirada judgment required the City to rescind not only all actions approving the HCPU, but also "all related approvals issued in furtherance of the HCPU", with the exception of "adjudicatory approvals not challenged which the City may have made under the HCPU after its adoption by the City." Pet. RJN, Ex. G. Petitioners contend that this final judgment and supporting writ created a mandatory duty to rescind all approvals for development projects in the Hollywood planning area that were made while the HCPU was in effect, except where no lawsuit was filed against the project. According to Petitioners, the Millennium Project is within the scope of the La Mirada judgment and writ and the City has a mandatory duty to rescind its approvals. Mot. at 31-32.

This argument requires interpretation of the La Mirada judgment. The rules for interpreting a court order or judgment are the same as in ascertaining the meaning of any other writing. Dow v. Lassen Irrigation Co. , (2013) 216 Cal.App.4th 766, 780; Los Angeles Local Board of Culinary Workers, etc. v. Stan's Drive-Ins, Inc., (1955) 136 Cal.App.2d 89, 94. Individual clauses or provisions are not considered separately but rather the entire document must be considered on its four corners and construed as a whole to effectuate its intentions. Id.

The Opposition is most certainly correct that the Project approvals are not "related approvals" under the La Mirada judgment. That judgment expressly states that related approvals "refers only to those quasi-legislative actions necessary to carry out the HCPU...." Pet. RJN, Ex. G (Emphasis added.) The Project approvals are independent of, and not necessary to carry out, the HCPU. The La Mirada judgment gives examples of what related approvals are, including the HCPU text and maps, the Resolution amending the 1988 HCP, the actions necessary to effect the HCPU, amendments to the General Plan made to reflect changes in the HCPU, and CEQA findings for the PCPU. The Project is not a related approval, and Petitioners are simply wrong arguing that any project that relied upon the HCPU is a related approval. Reply at 20-21.

Petitioners have not met their burden to show that the City is obligated to rescind the land use consistency findings as related approvals under La Mirada.

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8. Violation of the City Charter

Petitioners argue that the Development Regulations and Q Conditions are an unlawful blanket variance and/or an improper delegation of the City's police power. The Sixth Cause of Action alleges that the City granted variances for the Project without making the legally mandated findings under Charter section 562 and LAMC section 12.27(D), and the Seventh Cause of Action contends that the City has unconstitutionally impaired its police powers. Petitioners allege that the City is attempting to elevate the Development Regulations into the position of a municipal ordinance, per LAMC section 12.04 and 12.32, in irreconcilable conflict with Charter section 562. Id., ¶181. In doing so, the City is attempting to override other LAMC provisions. Id., ¶182. The LUEP and development regulations are a grant of carte blanche authority which is *ultra vires* and *void ab initio* because they amount to the City unconstitutionally surrendering its police power to regulate land use. Id., ¶183.

Petitioners present a history in which the City created the Development Regulations and LUEP to be adopted in conjunction with the Development Agreement. AR 4105-06. The Development Regulations would prevail over zoning or land use regulations in the LAMC. AR 4105, 18581. At the Planning Commission hearing, Millennium withdrew the Development Agreement when it was determined that the Commission would be disqualified from hearing it. AR 74811-12.[21] Instead of using the Development Agreement, the City claimed it had the authority to impose the Development Regulations and LUEP as Q Conditions of Approval. AR 74826. *See* LAMC §12.32(G).

Petitioner CURD then submitted evidence to the PLUM on appeal that Q Conditions authorized under LAMC section 12.32(G) must restrict a project, not increase a developer's rights to use property. AR 11169-1172. Implicitly accepting this argument, the City substituted the draft Ordinance for the original ordinance adopted by the Planning Commission. AR 11949-952. The draft Ordinance purported to enact the Development Regulations as Exhibit C. *See* AR 11644-95.

According to Petitioners, the substitution of the Ordinance for the original ordinance was accomplished through the creation of a false PLUM recommendation report that claimed PLUM had voted to recommend substituting the Ordinance for the original ordinance. This report recommended that the City Council "7. PRESENT and ADOPT the accompanying NEW ORDINANCE.... 8. NOT PRESENT and ORDER FILED the Ordinance approved by the [Planning Commission] on March 28, 2013." AR 11950. No such event ever happened, as reflected by the transcript of the PLUM hearing and the two documents approved by the PLUM. *See* AR 75174-299, 18466-470, 19738-42. The PLUM, or the City Clerk, created a false public record in violation of Charter section 281(c). CURD objected to this false record prior to the City Council hearing. AR 11731. Mot. at 35.

Petitioners argue that the Charter is the City's constitution and Charter section 562 protects the rights of residents by mandating that any variance from strict application of the zoning code proceed through a zoning administrator, who must make five affirmative findings. The City's attempt to enshrine the Development Regulations -- whether as the withdrawn Development Agreement, an *ultra vires* Q Condition, or a frantic enactment of City ordinance through a false public record -- cannot override Charter section 562 and is a void effort to grant

[21] The parties dispute whether the conflict was due to a conflict of interest by Planning Commission President William Roschen as a paid consultant to Millennium and that a City ethics investigation led to his rapid resignation. *Compare* Mot. at 34 *with* Opp. at 34, n.16.

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undisclosed variances. *See* Trancas Property Owners Assn. v. City of Malibu, (2006_ 138 Cal.App.4th 172, 181-82 (contract exempting development from zoning law is unenforceable as violation of public policy). Mot. at 35-36. The City cannot adopt a Q Condition that is more permissive than that permitted in the City's zoning code. LAMC section 12.32(G) authorizes the City to approve projects and restrict the land uses to those specified in the Q Condition, not expand a developer's right to override the zoning code. Mot. at 36.[22] Additionally, the combined effect of the Ordinance and the agreement signed by Millennium to make the Q Conditions enforceable against it (AR 11656) constitute an unconstitutional contracting away of the City's police power. Mot. at 36-37.

The creation of the Ordinance demonstrates unpalatable eagerness by the City. The Opposition defends the PLUM recommendation report claiming the PLUM had voted to recommend substituting the Ordinance for the original ordinance. AR 11950. The Opposition argues that the report is not false, as the PLUM did modify the original ordinance by adopting a City Planning memo of technical corrections and a letter from Millennium's counsel concerning the Conditions of Approval. AR 75294-95. Opp. at 34. However, the technical changes and changes to the Conditions of Approval submitted by Millennium's counsel and City Planning, they were not the new Ordinance described in the PLUM recommendation report. The PLUM report is false.

Although the brief history of the Ordinance is troublesome, the Opposition correctly argues that the Q Conditions are not a blanket variance. Opp. at 33. A "variance" is a "permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning code." Neighbors in Support of Appropriate Land Use. v. City of Tuolumne, (2007) 157 Cal.App.4th 997, 1007. The City did not grant Millennium a variance to deviate from zoning requirements, although it tried to do so in the Development Agreement. Rather, the City made a legislative policy choice in the Ordinance to favorably zone the Project Site, and this zoning rests on equal footing with the other zoning in the City.[23] Charter section 562 does not prevent the adoption of the Ordinance and the Q Conditions in it.

The false trail concerning adoption of the Ordinance does not necessarily invalidate it, and Petitioners do not argue that it does. Instead, they contend that the Ordinance adopts the Development Regulations (Exhibit C), which expressly provide that they shall prevail over any more restriction zoning provision in the LAMC. AR 18581. According to Petitioners, this prevents the City from enacting in the future any zoning provision inconsistent with the Development Regulations and, as such, is an unconstitutional delegation of police power. Since Millennium has potentially 12 years to begin the Project (AR 75052), this is no small consideration. Reply at 22. On this point, Petitioners rely on Cotta v. City and County of San

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[22] The court agrees with this argument, which however is mooted by enactment of the Ordinance.

[23] This appears to be the converse of "spot zoning", which is a legislative zoning of a specific property in a discriminatory fashion such that it has lesser rights than surrounding properties. *See* Consaul v. City of San Diego, (1992) 6 Cal.App.4th 1781, 1801. Illegal spot zoning involving the unreasonable and arbitrary regulation of uses of property is an unconstitutional violation of due process. Echevarrieta v. City of Rancho Palos Verdes, (2001) 86 Cal.App.4th 472, 483. The City provided Millennium with favorable zoning, not more restrictive zoning.

Francisco, ("Cotta") 157 Cal.App.4th 1550, 1557-59 and 108 Holdings, Ltd. v. City of Rohert Park, ("108 Holdings") (2006) 136 Cal.App.4th 186, 194. Reply at 22.

A municipality may not contract away its legislative and governmental functions. 108 Holdings, 136 Cal.App.4th at 194. Such power may not be surrendered or impaired either by contract or ordinance. Id. The controlling consideration is whether the local entity has bargained away its police power or municipal function. Id. at 195.

In 108 Holdings, the city entered into a stipulated judgment that bound it to interpret and apply its general plan in the manner set forth. Id. at 191. The petitioner claimed that this was an unlawful surrender of police power, and the court disagreed. Nowhere in the stipulated judgment did the city agree to refrain from legislating in the future on matters that were subject to the stipulated judgment; the city could amend its general plan as it saw fit and future circumstances dictated. Id. at 195. The court distinguished County Mobilehome Positive Action Com., Inc. v. County of San Diego, (1998) 62 Cal.App.4th 727, in which a county had imposed a 15-year moratorium on the enactment of rent control legislation for mobilehome park owners who entered into an agreement with the county. The agreement specified that its provisions would prevail over any county action, and the county agreed not to adopt any ordinance that would regulate mobilehome rent the owner could charge. This action prevented the county from exercising its police power out of fear that a subsequent enactment would expose the count to a breach of contract action. Id. at 195-96. In contrast, the 108 Holdings stipulated judgment did not limit the city's ability to amend its general plan in the future. Reservation of police power is implicit in all government contracts and private parties take their rights subject to that reservation. Id. at 196.

In Cotta, the court addressed an exercise of police power after an airport commission entered into a contract granting certain benefits to taxi drivers of clean air taxis providing service at San Francisco Airport. The plaintiffs purchased compressed natural gas taxis and operated them. Then the commission adopted a new resolution that conferred fewer benefits. 157 Cal.App.4th at 1553. The court held that the commission's earlier resolution did not create a contract and was in fact a regulatory framework which involved no vested right. If construed as a contract, it would be unenforceable as an unlawful delegation of police power. Id. at 1563-64.

Petitioners point to nothing in the Ordinance and the Development Regulations which prevents the City from adopting a future ordinance changing the Project's zoning. To the contrary, Millennium had to sign an agreement that it is bound by the Conditions of Approval, which restrict its use of the property. AR 11656. The Development Regulations, which are part of the Ordinance, do state that they trump inconsistent zoning provisions. AR 18581. But this is merely one ordinance controlling the application of another existing ordinance of equal dignity. Petitioners point to no provision of the Ordinance or Development Regulations which prevents the City from changing the zoning at the Project Site, either before Millennium begins development or afterwards (when vested rights may occur).

It is worth noting that the now withdrawn Development Agreement expressly stated that the City accepted the Development Agreement's restrictions on its police powers only to the extent required to achieve the parties' mutual objectives and to obtain public benefits which go beyond those obtained by traditional city controls on projects. AR 23437. Otherwise, the City reserved all remaining police powers to itself. AR 23436. Presumably, the Ordinance, which was created to substitute for the Development Agreement, was intended to effectuate the same result.

The Ordinance is not an unconstitutional delegation of police power.

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9. Violation of Due Process and Recirculation

Petitioners argue that the PLUM and City Council hearings violated due process and their right to a fair hearing.

Specifically, at the PLUM hearing Millennium's attorney was permitted to make new substantive claims that CURD was not permitted to rebut (AR 11735-39), and major changes were made to the Development Regulations as set forth in a May 31, 2013 letter from Millennium's counsel and in a June 18, 2013 Planning staff memo without providing a copy to the public (AR 18466079), 19038-42).

At the City Council hearing, (1) Millennium's attorney submitted a 311-page letter and supporting evidence, including a 120-page geological report, less than 18 hours before the hearing and the City Council provided no opportunity to refute these arguments, (2) the City Council required CURD and the public to testify before calling City staff to give new presentations and evidence, and (3) the City Clerk announced at the hearing that an amending motion had been circulated when in fact it had not.

Finally, persons who attended the PLUM and City Council hearings either had no opportunity to speak or were given an impossible one minute to present evidence. Petitioners argue that each of the 131 persons who asked and were denied the opportunity to be heard at the public hearing should have been heard. *See* Manufactured Home Communities, Inc. v. County of San Luis Obispo, (2008) 167 Cal.App.4th 705 (mobilehome park owner denied fair hearing where rent control board exercised judicial-like powers in deciding the parties' rights in their leases and relied on uncross-examined testimony of tenants). Mot. at 39-40. Petitioners contend that they were deprived of an opportunity to refute and explain as a result. Mot. At 38-39.

Due process is flexible and does not require any particular procedure, so long as there is notice and a reasonable opportunity to be heard. Horn v. County of Ventura, (1979) 24 Cal.3d 605, 612. Rather, these requirements vary according to the competing interests of the government and the citizen. Skelly v. State Personnel Board, (1975) 15 Cal.3d 194, 208. At a minimum, due process requires notice and an opportunity for a hearing. Id. When an agency conducts adjudicatory proceedings, the hearing must comply with principles of due process. Morongo Band of Mission Indians v. State Water Resources Control Board, (2009) 45 Cal.4th 731, 737. The tribunal must be free of bias, and an adjudicator is presumed impartial unless he or she has a financial interest in the outcome. Id. Where city council has authority to make final adjudications of fact, it may not rely on information of which the parties were not apprised and of which they had no opportunity to controvert. Clark v. City of Hermosa Beach, (1996) 48 Cal.App.4th 1152, 1171 (property owner was denied fair hearing on application to construct two-unit condominium).

Petitioners have not shown they have a due process right. Some of the City's actions (*e.g.*, the Ordinance) were legislative in nature. No person has a due process right for a body's legislative approvals; only governmental decisions which are adjudicative in nature are subject to procedural due process principles. Horn, *supra*, 24 Cal.3d at 612. For that portion of the City's approvals that were quasi-adjudicative, Petitioners must show that they a property right supporting a due process violation. Horn, *supra*, 24 Cal.3d at 615. This requires a protected property interest, which must be more than an abstract need or desire for an outcome. Smith v. Board of Quality Medical Assurance, (1988) 202 Cal.App.3d 316, 326. While Petitioners have shown they are property owners or community members, they have not shown that their property

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rights are protected because they are adversely affected by the Project. *See* Abrahams Decl., ¶'s 3-4, 8; Dodge Decl., ¶3-4; Schwartz Decl., ¶3-4.

Aware of this fact, Petitioners rely on a dignitary interest – which is an interest in being informed of government action and in being able to present his or her side. Reply at 24. But this is putting the cart before the horse. A dignitary interest in due process only applies once it is determined that the plaintiff has a constitutionally protected property interest; Petitioners cannot use a dignity interest to create a property interest. *See* Mohilef v. Janovici, ("Mohilef") (1996) 51 Cal.App.4th 285-87 (deciding existence of protected property interest before using dignitary interest to decide what process was due).[24]

Assuming that Petitioners have a due process interest, the hearings provided the notice and opportunity to be heard that are the basics of due process. It is undisputed that the City provided notice. The City also provided an opportunity to be heard, fairly dividing the presentation time. At the PLUM hearing, Petitioners were given ten minutes to present its case. Members of the public opposing and supporting the Project were given 20 minutes, respectively. At the City Council hearing, Petitioners' side (including another appellant) was given 20 minutes, twice as much time as Millennium. Members of the public were given ten minutes each. Petitioners individually and through their counsel also submitted many letters, reports, opinions, and emails to the City. Consequently, Petitioners certainly had an opportunity to be heard. As for the public at large, Petitioners cite no case holding that every person who attends a public hearing must be given a chance to speak; local government could never perform the people's business if that were true. The City Council was entitled to limit the number and time of speakers to avoid cumulative information.

There were aspects of the hearing process which appear unfair, including the PLUM's acceptance of changes to Q Conditions and the Development Regulations through a May 31, 2013 letter from Millennium's counsel and through a Planning staff memo without providing either to the public, the submission by Millennium's attorney of a 311-page letter rebutting Petitioners' arguments less than 18 hours before the City Council hearing, requiring CURD and the public testify before City staff gave its presentation, and the City Clerk's announcement at the City Council hearing that an amending motion had been circulated when one had not been circulated.

The court need not decide whether these errors individually or cumulatively denied a fair hearing because Petitioners have not discussed prejudice: why the City's procedural due process errors require a new hearing. Prejudice is required for public agency decisions on land use matters. Govt. Code §65010; Rialto Citizens for Responsible Growth v. City of Rialto, (2012)

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[24] Petitioners' reliance on American Tower Corp. v. City of San Diego, (9th Cir. 2014) 763 F.3d 1035, 1050-51 is not to the contrary. In that case, the Ninth Circuit interpreted Horn as relying on the broader due process principles of the California Constitution in holding that reasonable notice and an opportunity to be heard is required before an agency makes a land use decision that is a substantial deprivation of landowner property rights. Id. at 1051. Thus, American Tower concluded that adjacent and nearby property owners could make a due process objection to a city decision to permit dozens of antennas perched on hundred foot towers alongside sizable equipment shelters. Id. Whatever the correctness of American Tower's interpretation of Horn, Petitioners have made no such showing of significant impact from the Project. *See* Mohilef, *supra*, 51 Cal.4th at 285, n.16 (equating scope of federal and state due process for purposes of nuisance abatement case).

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208 Cal.App.4th 899, 920-22. Petitioners argue that they are relying on constitutional, not statutory principles (Reply at 25), but due process does not mandate that all governmental decision-making comply with standards that assure perfect, error-free determinations. Machado v. State Water Resources Control Board, (2001) 90 Cal.App.4th 720, 725-26.[25]

The due process and fair hearing claims are denied.

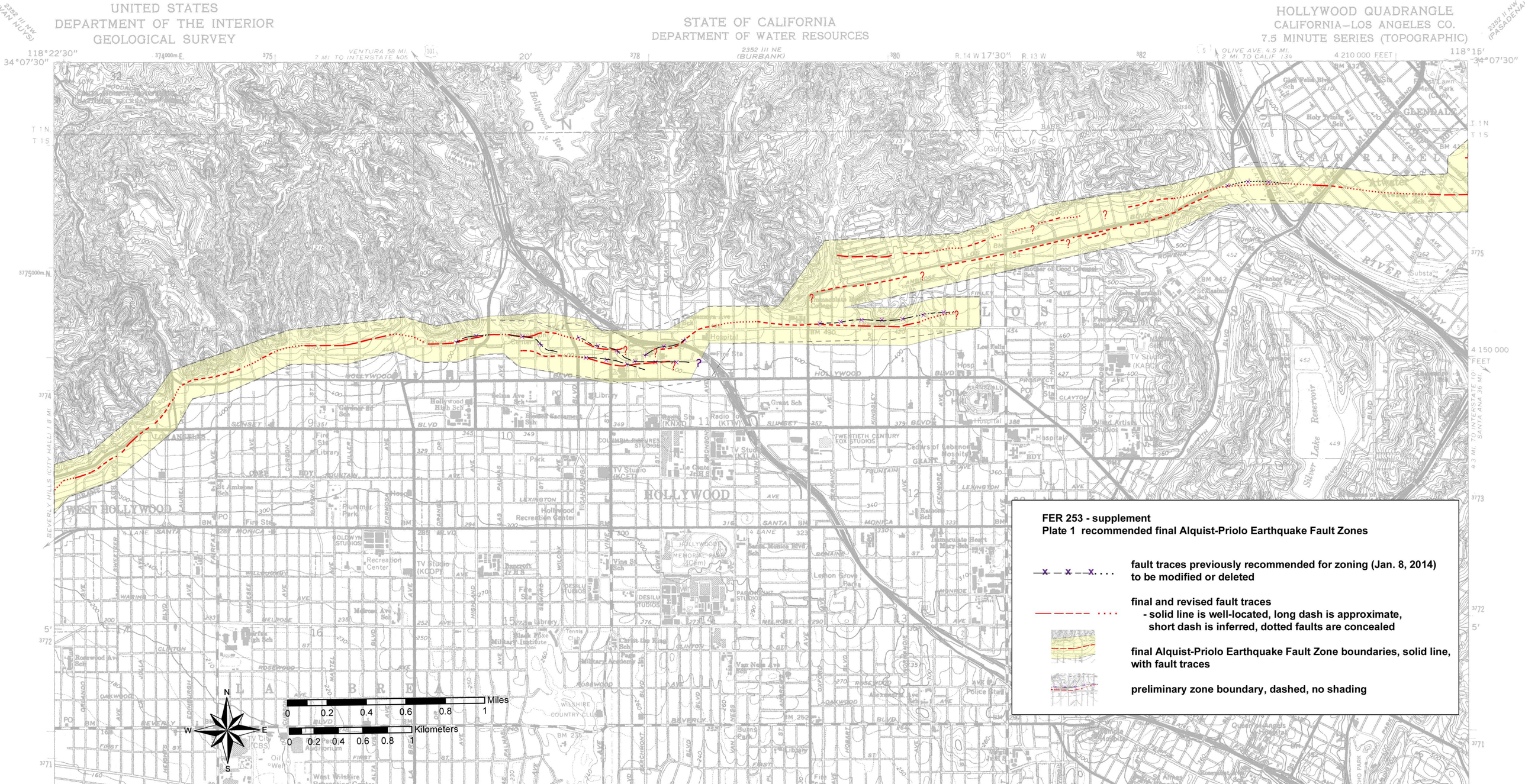
G. Conclusion

The Petition is granted in part. The First and Second causes of action under CEQA are granted. The Third Cause of Action under CEQA is denied. The Sixth, Seventh, and Eighth causes of action (violation of City Charter, delegation of police power, and violation of La Mirada are denied, as are the Fourth and Fifth causes of action (due process and fair hearing). A writ of mandamus shall issue directing the City and City Council to vacate and set aside the actions approving the FEIR, Project approvals, and all land use entitlements. An injunction shall issue enjoining the City from granting any authority, permits, certificate of occupancy, or entitlements for the Project pursuant to the City's prior actions, and enjoining Millennium from undertaking construction on the Project pursuant to the set aside approvals.

~~Petitioners' counsel is ordered to prepare a proposed judgment and writ of mandate, serve~~ them on counsel for the opposing parties for approval as to form, ~~wait 10~~ days after service for any objections, meet and confer if there are ~~objections~~, and then submit the proposed judgment and writ along with a ~~declaration~~ stating the existence/non-existence of any unresolved ~~objections. An OSC re: judgment is set for June 11, 2015 at 9:30 a.m.~~

[25] Petitioners also argue that recirculation of the DEIR was required under Guidelines section 15088.5, which provides for recirculation is required where significant new information is added after public notice is given for review of the DEIR. New information is not significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment. Id. Petitioners point to nearly 400 pages of new or revised tables and analysis, much of it related to traffic and noise analysis (AR 5824-6222) and to Millennium's 120-page geology report and other materials submitted 18 hours prior to the City Council hearing. Petitioners argue that disclosure of this information and analysis was mandatory in the DEIR, not later when the public could no longer officially comment on it. Mot. at 33. The Opposition does not respond to this issue which is mooted by the fact that a new EIR is required.

EXHIBIT 2


UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
HOLLYWOOD QUADRANGLE
CALIFORNIA–LOS ANGELES CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
118°22'30"
34°07'30"
118°15'
34°07'30"
HOLLYWOOD
WEST HOLLYWOOD
GLENDALE
LA BREA
Silver Lake Reservoir
Hollywood Res
Miles
0 0.2 0.4 0.6 0.8 1
Kilometers
0 0.2 0.4 0.6 0.8 1
N
S
E
W
FER 253 - supplement
Plate 1 recommended final Alquist-Priolo Earthquake Fault Zones
fault traces previously recommended for zoning (Jan. 8, 2014) to be modified or deleted
final and revised fault traces
- solid line is well-located, long dash is approximate, short dash is inferred, dotted faults are concealed
final Alquist-Priolo Earthquake Fault Zone boundaries, solid line, with fault traces
preliminary zone boundary, dashed, no shading

CALIFORNIA GEOLOGICAL SURVEY
FAULT EVALUATION REPORT FER 253

THE HOLLYWOOD FAULT
in the Hollywood 7.5' Quadrangle
Los Angeles County, California

by
Janis L. Hernandez
Engineering Geologist
and
Jerome A. Treiman
Senior Engineering Geologist
February 14, 2014

INTRODUCTION

The Hollywood Fault is within the central portion of the Santa Monica-Hollywood-Raymond Fault system, which is collectively part of a greater than 200-km long west-trending system of oblique, reverse and left-lateral faults that separate the Transverse Ranges geomorphic province of California on the north, from the Peninsular Ranges province on the south (Dolan *et al.*, 1997). The Hollywood Fault extends east-northeast for about 17 km through densely populated areas, including the cities of Beverly Hills, West Hollywood, and the community of Hollywood within the City of Los Angeles, trending eastward to the Los Angeles River Valley (Figure 1).

Recent detailed geologic and geotechnical studies for residential and commercial development in the cities of West Hollywood and Los Angeles have reported Holocene faulting at a number of sites along the Hollywood Fault. Infrastructure projects (sewer and subway) and groundwater studies, in addition to gravity data, also provide support that the Hollywood Fault is active and continues eastward toward the Raymond Fault. The majority of the Raymond Fault has been zoned as active, to within about 4 km east of the Los Angeles River at the eastern edge of the Santa Monica Mountains (see Figure 1).

Both the Santa Monica and Hollywood Faults were previously evaluated for Holocene active faulting as part of the 1977 study area of the 10-year program for fault evaluation (Smith, 1978). That study concluded there was insufficient evidence of Holocene faulting to recommend fault traces for zoning at that time. Subsequent geologic and geotechnical studies, paleoseismic studies, geomorphologic studies reported by Dolan *et al.* (1997), Dolan *et al*. (2000), and other published and unpublished research, have prompted CGS review of these recently available data to re-evaluate evidence for Holocene displacement along traces of the Hollywood Fault.

The purpose of this report is to assess the location and activity of fault strands associated with the Hollywood Fault within the Hollywood 7½-minute quadrangle. Those faults determined to be sufficiently active (Holocene) and well-defined are zoned by the State Geologist as directed by the Alquist-Priolo Earthquake Fault Zoning (AP) Act of 1972 (Bryant and Hart, 2007). This report does not attempt to reevaluate any strands of the Newport-Inglewood Fault zone.

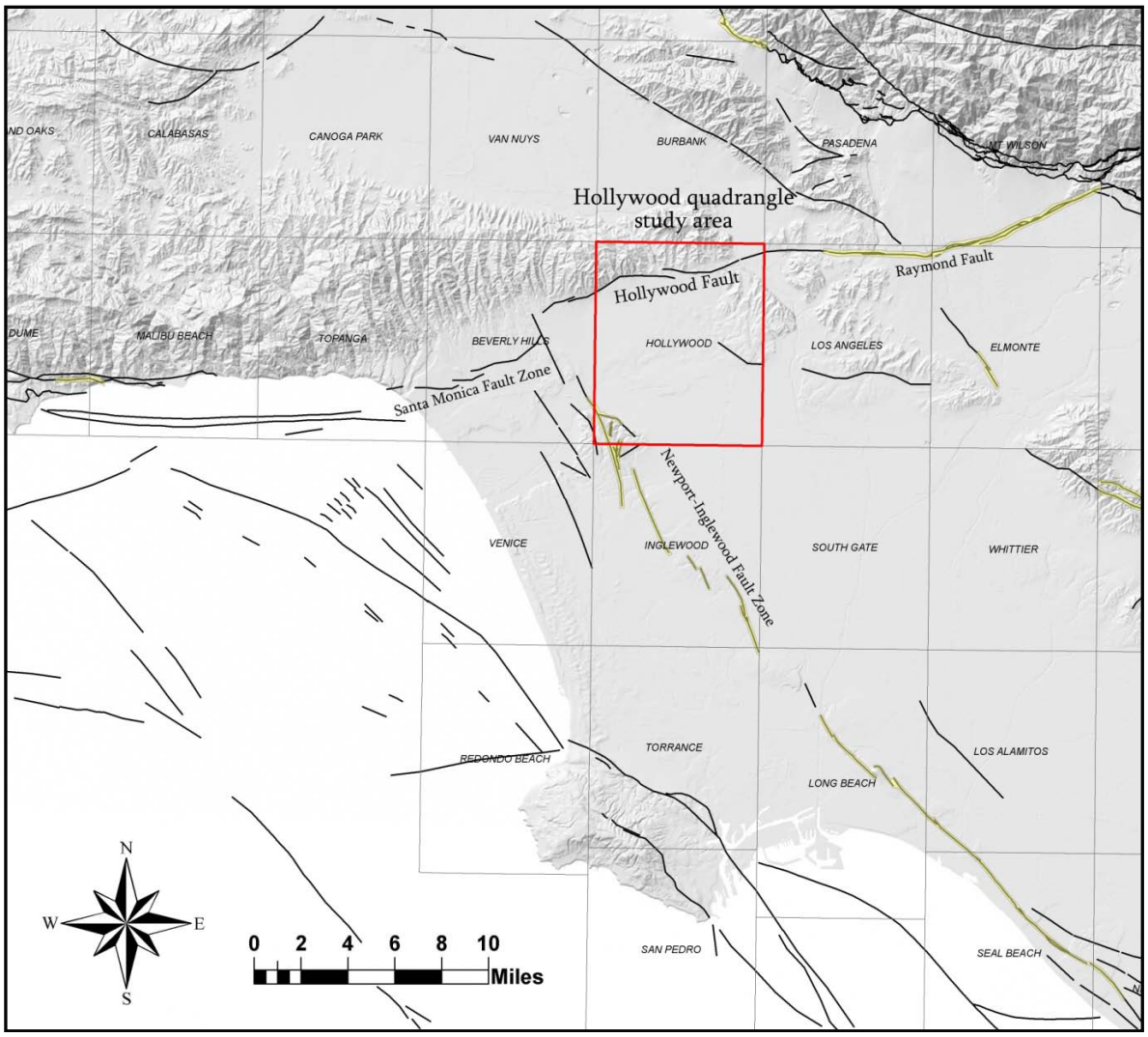


Figure 1- Study area of the Hollywood quadrangle and names of selected faults in the vicinity. Faults within existing Alquist-Priolo Earthquake Fault Zones are within yellow-shaded boundaries; other faults are indicated in black. Fault strands of the Newport-Inglewood Fault Zone are not a part of this evaluation. Source: USGS Quaternary Fault and Fold Database of the United States. (http://earthquake.usgs.gov/hazards/qfaults/)

GEOLOGIC SETTING AND PREVIOUSLY PUBLISHED WORK

The Hollywood Fault is located along the southern boundary of the Santa Monica Mountains, where Cretaceous granitic rocks; mainly quartz diorite, and Feliz biotite granodiorite (as reported in Lamar, 1970), are unconformably overlain by folded and faulted early to middle Miocene Topanga group marine siltstones, sandstones, and basaltic volcanic rocks, and late Miocene Puente Formation marine sandstones, siltstones and shales. Alluvial deposits flanking the mountain front consist of Pleistocene and Holocene alluvial fan deposits, colluvial sediments, and local slope wash.

The Hollywood Fault also defines the northern edge of the Hollywood basin, an asymmetric basin structure that is bound on the south by the North Salt Lake Fault (Figure 1a). Gravity data indicate the basin is deeper along the northern edge, next to the Hollywood Fault (Hildenbrand *et al.*, 2001). In the Los Angeles River floodplain (Figure 1), the Hollywood Fault is

defined by a steep gravity gradient (Chapman and Chase, 1979), and a steep drop in groundwater levels as the fault trends eastward toward the Raymond Fault (State Water Rights Board, 1962).

The Hollywood Fault was previously mapped by many workers including Hoots (1930); Lamar (1970); Weber *et al.* (1980); and Dibblee (1991), where they generally placed the fault at the steep break in slope along the southern edge of the Santa Monica Mountains. More recent mapping by Dolan *et al.* (1997) provided a more detailed view of the fault that takes into account geomorphic indicators as well as site-specific data (discussed later in this report).

Mapping by Hill *et al.* (1979) similarly reported the Hollywood Fault trace located at the base of the Santa Monica Mountains, however, they also mapped a southern trace, which they referred to as the Santa Monica Fault. This southern trace delineates the south margin of the Hollywood basin, defined by a zone of differential subsidence (shown on Plate 1). The identification of this zone is supported by their analysis of oil well data, groundwater data, and review of precise leveling surveys. A similar assessment of the structural boundary of the Hollywood Basin was made by Hildenbrand *et al.* (2001) based on gravity data, although they identified the southern bounding structure as the North Salt Lake Fault (Figure 1a).

At the eastern edge of the Santa Monica Mountains, the concealed trace of the Hollywood Fault was previously mapped in various configurations, generally extending east to northeast into the Atwater area. Originally believed to be a reverse fault, more recent research (e.g. Dolan *et al*.: 1997, 2000; Law/Crandall, 2001; William Lettis and Associates, 2004) suggests a dominant strike-slip component. Previous mapping is shown on Plate 1.

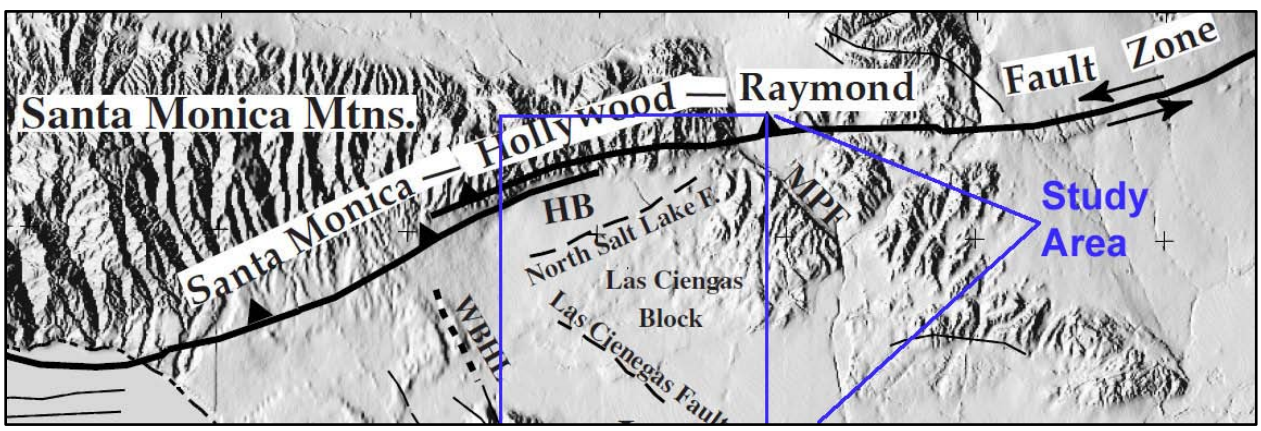


Figure 1a - location of Hollywood Basin (**HB**) with respect to the Hollywood Fault and the North Salt Lake Fault. (clipped/modified from Hildenbrand *et al.* (2001)

SEISMICITY

Regional seismicity records from Hauksson *et al.*, (2012), indicate there have not been any significant earthquake events within the past 30 years that might be confidently associated with the Hollywood Fault (Figure 2). In the Los Angeles region, several historical earthquakes have generated strong shaking in the vicinity of the Hollywood Fault, including: the 1971 M6.6 San Fernando, 1987 M5.9 Whittier Narrows, 1988 M5.0 Pasadena, 1991 M5.8 Sierra Madre, and the 1994 M6.7 Northridge event. The 1988 Pasadena earthquake occurred on the Raymond Fault. Seismic records from the 1988 event provided additional confirmation of left-lateral displacement along the Raymond Fault (Jones *et al.*, 1990).

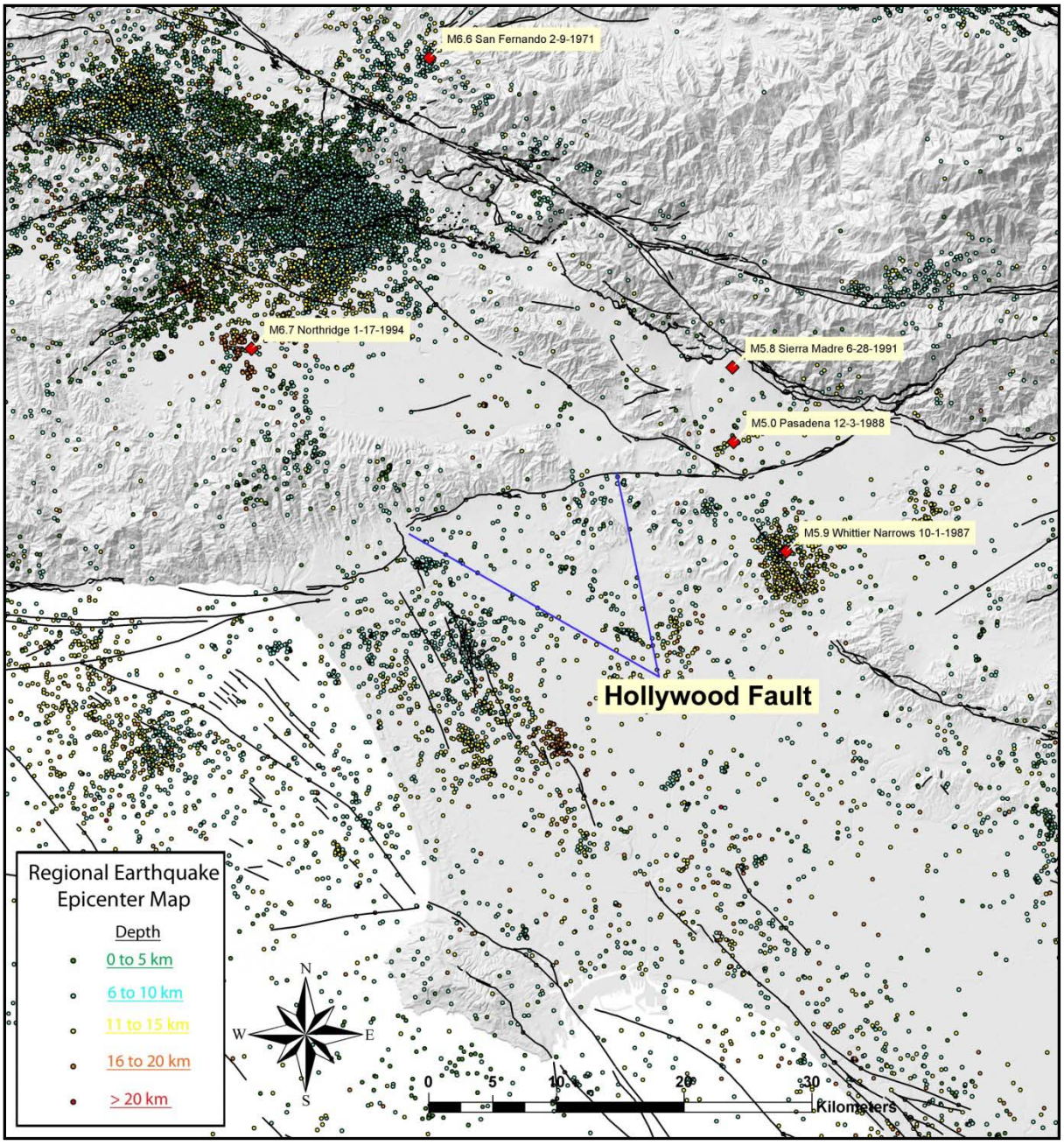


Figure 2 - Regional seismicity from 1981 to June 2011 (Hauksson et al, 2012), including significant faults within the greater Los Angeles basin area. Faults (in black) are from the U.S. Geological Survey and California Geological Survey, 2006, Quaternary fault and fold database. (http://earthquake.usgs.gov/hazards/qfaults/)

SUMMARY OF AVAILABLE DATA

PALEOSEISMIC STUDIES AND CONSULTING REPORTS

(for referenced localities, see Plate 1 and related figures)

Critical studies that bear on the location and recency of faulting along the Hollywood Fault have come from three general areas: (1) geologic and geotechnical studies within the City of West Hollywood; (2) research, geologic, geotechnical and infrastructure studies in downtown Hollywood (Curson Avenue to Highway 101); and (3) groundwater and infrastructure studies in the Los Angeles River area. There has been very little site-specific data generated between Highway 101 and the Los Angeles River.

West Hollywood

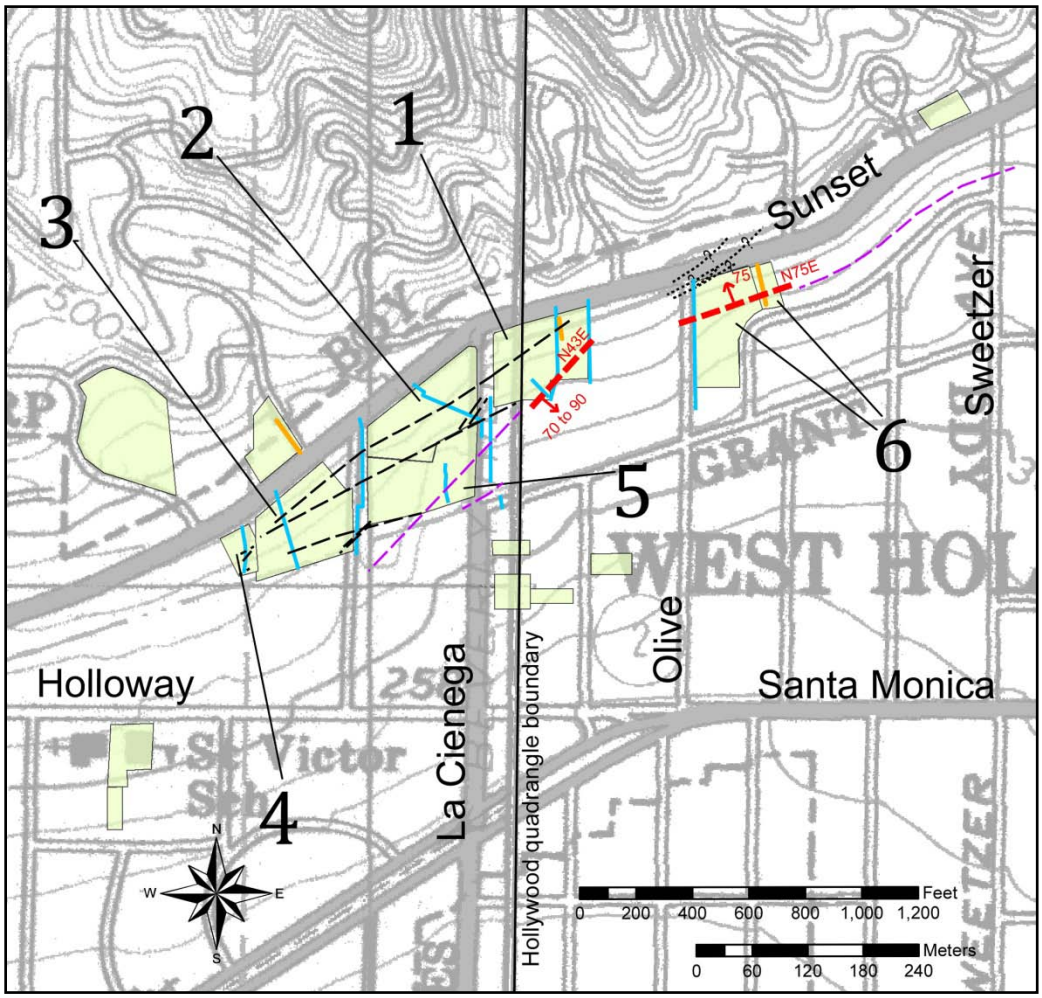


Figure 3- Study site boundaries (light green boxes) where fault studies have provided evidence of faulting (localities 1 through 6, discussed in text; these and other localities are also shown on Plate 1). Un-numbered sites found no evidence of faulting. Faults with evidence of Holocene displacement indicated in red; purple faults are potentially active; black faults are pre-Holocene. Short gold lines are trenches, and blue lines are boring transects. Note: not all exploratory boring transects are shown at this scale.

The City of West Hollywood Fault Precaution Zone Map, and Geologic and Seismic Hazard Technical Background Report, prepared by KFM Geoscience, Inc. (2010) is a crucial part of the City of West Hollywood General Plan. Included in the KFM report is a summary of Fault Rupture Hazard Studies from 29 sites that are on file with the City, collected from 1997 to 2013. Of these reports, 8 sites yielded data that active faulting exists within those sites or otherwise helped constrain the fault location near the western boundary of the Hollywood Quadrangle. Of these 8 sites, several studies were performed adjacent or in close proximity to one another; these are shown on Figure 3.

An investigation by Harza (1998, Figure 3, locality 1) was one of the earliest studies in this area that found two zones of faulting: a northern and a southern fault zone. Paleoseismic studies from borings and trenching at the site indicate these north-dipping faults of the northern fault zone do not offset an argillic soil horizon estimated to be over 120,000 years old based on degree of soil profile development. This northern fault zone includes several strands, which they report strike from N50°E to N70°E, dipping from 50° to 60° NW. Striae and slickensides measured in bucket auger borings provided evidence for north-side-down normal sense of displacement for these northern strands.

The southern fault zone (herein discussed as Fault 1) was reported as a northeast striking, southeast dipping fault that vertically offset Quaternary deposits at least 150 feet and acts as a groundwater barrier. Harza (1998) recommended a building setback zone for Fault 1 as a precautionary method until further studies could be made. Recent work, including observations from down-hole logged bucket auger borings and ^{14}C dating of the soils by WLA (2004) have determined this southern fault zone (Fault 1) is active. Figure 4 illustrates the upward terminations of three strands (D, E, and F) of Fault 1. Fault 1 is oriented N50° to 55°E, dipping 53° to 56° SE as reported from bucket auger down-hole observations. Charcoal samples from faulted soil horizons revealed dates about 9,910 to 10,190 ybp, and 15,250 to 16,650 ybp. WLA (2004) also reported an unfaulted soil horizon above fault strand D to be 8,590 to 8,990 ybp, suggesting a minimum age of faulting at fault strand D. They suggested that, because the fault tips of strands D, E, and F all occur at about the same stratigraphic position, these three closely spaced splays ruptured in the most recent earthquake. Based on the detrital charcoal samples, they concluded the most recent surface-rupturing earthquake on strands D, E, and F of Fault 1 occurred between ~8,500 and 10,000 years ago.

A report by WLA (1998c) at locality 2 finds that four faults underlie the site. They state that these faults are overlain by multiple unbroken Pleistocene soils and that the southernmost fault has displaced Pleistocene deposits and is overlain by unbroken Holocene deposits. Additional details gathered from exploratory borings provided insight that the northern fault zone is found to offset a marine wave-cut (abrasion) platform at depth. Evidence includes a gently dipping, planar surface of quartz diorite bedrock, overlain by a thin veneer of beach sand, and smooth, rounded, non-quartz diorite cobbles and pebbles. They reported the age of this marine wave-cut platform is constrained by the age of the overlying alluvial sediments, where they estimated this abrasion platform to be between 400,000 to 900,000 years old. Further, they report a significant amount of platform tilting is present between fault-bound blocks. However, measurable evidence of late Quaternary folding or tilting of the overlying sediments was not present at the site.

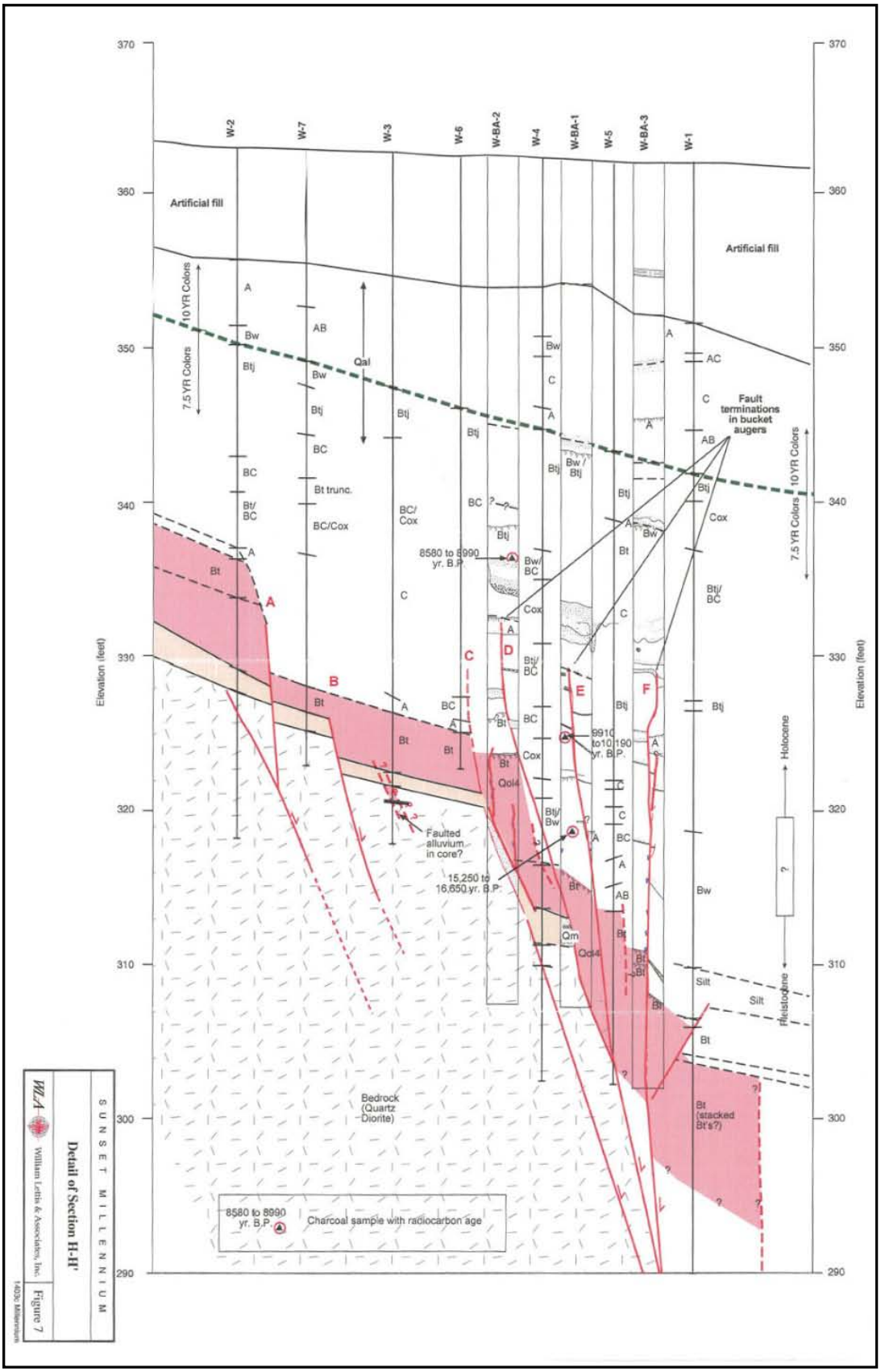


Figure 4 - Upward terminations of fault strands D, E, and F within Fault "1", Locality 1; modified from WLA, 2004.

A study by WLA (1998b), located southwest of Alta Loma Road at Sunset Boulevard (locality 3), mapped four faults across the site that are reported as inactive based on unfaulted late Pleistocene soils that overlie the faults. These faults were reported to be secondary faults and not the main trace of the Hollywood Fault. They report that similar to locality 2, these faults are part of the northern fault zone and are found within the marine wave-cut abrasion platform at depth. They infer the main trace to lie well south of Sunset Boulevard in this location.

An interesting detail about the Hollywood Fault as reported by WLA (1998c) and discussed by T. Rockwell (p.c., 2013), is that the gently sloping marine abrasion surface consists of one and possibly two paleo-marine terraces at depth in this area, with a terrace riser (or sea cliff) at the back of each terrace. Some of the escarpments observed along the base of the Santa Monica Mountains, previously thought to be the location of the Hollywood Fault, are now interpreted as paleo-sea cliffs.

Work completed by WLA (2007b) south of Sunset Boulevard at locality 4 found no active faults are present at the site. They encountered three inactive secondary faults at the site that were described to be part of the inactive northern fault zone, as noted at localities 1, 2 and 3]. They reported these faults are overlain by distinctive, continuous buried Pleistocene soils.

A study by ECI (1999a) at locality 5, found the northern fault zone and marine abrasion platform to be overlain by unbroken Pleistocene age soils in all of their borings, indicating Holocene faulting has not occurred at this location. Fault 1 underlying the site was also judged to be not active, based on apparent continuity of overlying pre-Holocene stratigraphy as interpreted from their borings. However, the correlated contacts are not clearly continuous and some Holocene offset cannot be precluded. Based on the relatively small offset of the quartz diorite basement terrain (relative to other sites) and the generally normal separation on the on-site faults, ECI (1999a) concluded that the principal trace of the Hollywood Fault must lie to the south of their site.

Studies located on the southeast corner of Sunset Boulevard and Olive Avenue at Locality 6 (Applied Earth Sciences, 1997; Johnson, 1999; Law/Crandall, 2001) found that a northern and southern set of faults crossed the site. The northern fault zone, as in studies to the west, was reported as not active based on unfaulted Pleistocene soils at the site. Additionally, these studies encountered the marine abrasion platform and associated cobble and boulder size clasts of well-rounded quartz diorite and other exotic clasts, with well-sorted, clean, fine- to medium-grained sand. They interpreted the northern fault zone as a minor, secondary fault zone that accommodated local extension in a left step of the Hollywood Fault zone. The active southern fault zone is steeply north-dipping, and extends into alluvial units of Holocene age up to within 15 feet of the ground surface (Figure 5). Law/Crandall (2001) determined this strand is active based on radiocarbon dating of detrital charcoal samples, indicating the faulted soils were approximately 9,000 to 10,000 years old. Both Law/Crandall (2001) and Applied Earth Sciences (1997) recommended structural setbacks from the fault. This southern strand vertically offsets bedrock by at least 150 feet of south-side down separation, and also forms a steep groundwater step. Unfaulted Pleistocene sediments were documented south of the southern fault zone.

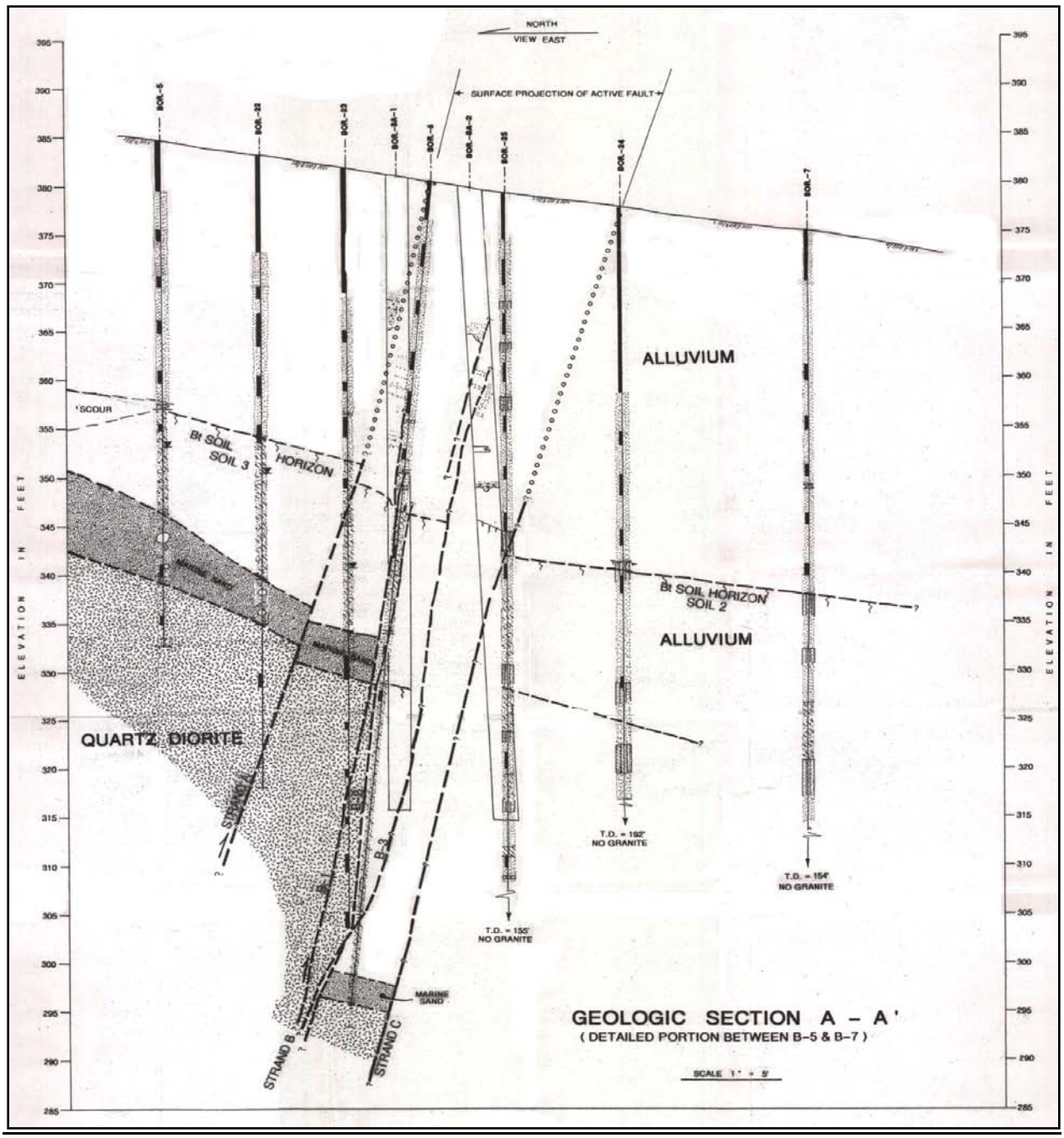


Figure 5 - Cross section showing south-side down offset on the southern fault zone at the southeast corner of Sunset Blvd. and Olive Drive, West Hollywood (site 6). Thickness of marine sand decreases to the south. Modified from Law/Crandall, 2001.

A study by Schell (1998) was performed for a site located south of Sunset Boulevard along Harper Avenue (locality 7, Plate 1). Boreholes were drilled for the site, and were extended north across Sunset Boulevard and a steep escarpment. Borings revealed a steep groundwater step, and an offset of quartz diorite bedrock in excess of 150 feet near Sunset Boulevard. Based on this data and geomorphic expression of the fault scarp, Schell interpreted that the main trace of the Hollywood Fault lies north of his site, along the south edge of Sunset Boulevard. He concluded that there were no significant faults to the south based on apparent

continuity of several sediment packages of increasing relative age with depth, with the lower units identified as pre-Holocene.

A study by ECI (2001a) was completed for a proposed development located south of Sunset Boulevard at Havenhurst Drive at locality 8 (shown on Plate 1). This site is adjacent to locality 7 and ECI included data from that work in their analysis (Schell, 1998) in addition to their own borings extending offsite toward Sunset Boulevard. After analysis of groundwater levels, topographic data, soil development characteristics, and stratigraphic correlation across the southern portion of ECI's site, they concluded the fault zone immediately south of Sunset Boulevard may be wider than originally mapped by Schell, where they mapped a second north-dipping active fault strand to the south of Schell's trace. Continuity of pre-Holocene stratigraphy beneath the site, based on borings, was used to preclude any additional young faulting. Ages of stratigraphic units were based on one radiocarbon date and relative soil development characteristics.

Downtown Hollywood

Much of the synthesis and reported details in the downtown Hollywood area go back to Dolan *et al.* (1997). Work by Dolan *et al.* (1997) included geomorphic analysis of tectonic landforms along the fault trace using historic topographic maps (1920s vintage) and field reconnaissance. They also presented and analyzed data from several geotechnical studies. They interpreted at least three major fault splays: the Franklin Avenue strand, the Yucca Street strand, and a northern strand as shown in Figure 6 (see also Plate 1). Details of individual parts of their study are discussed below.

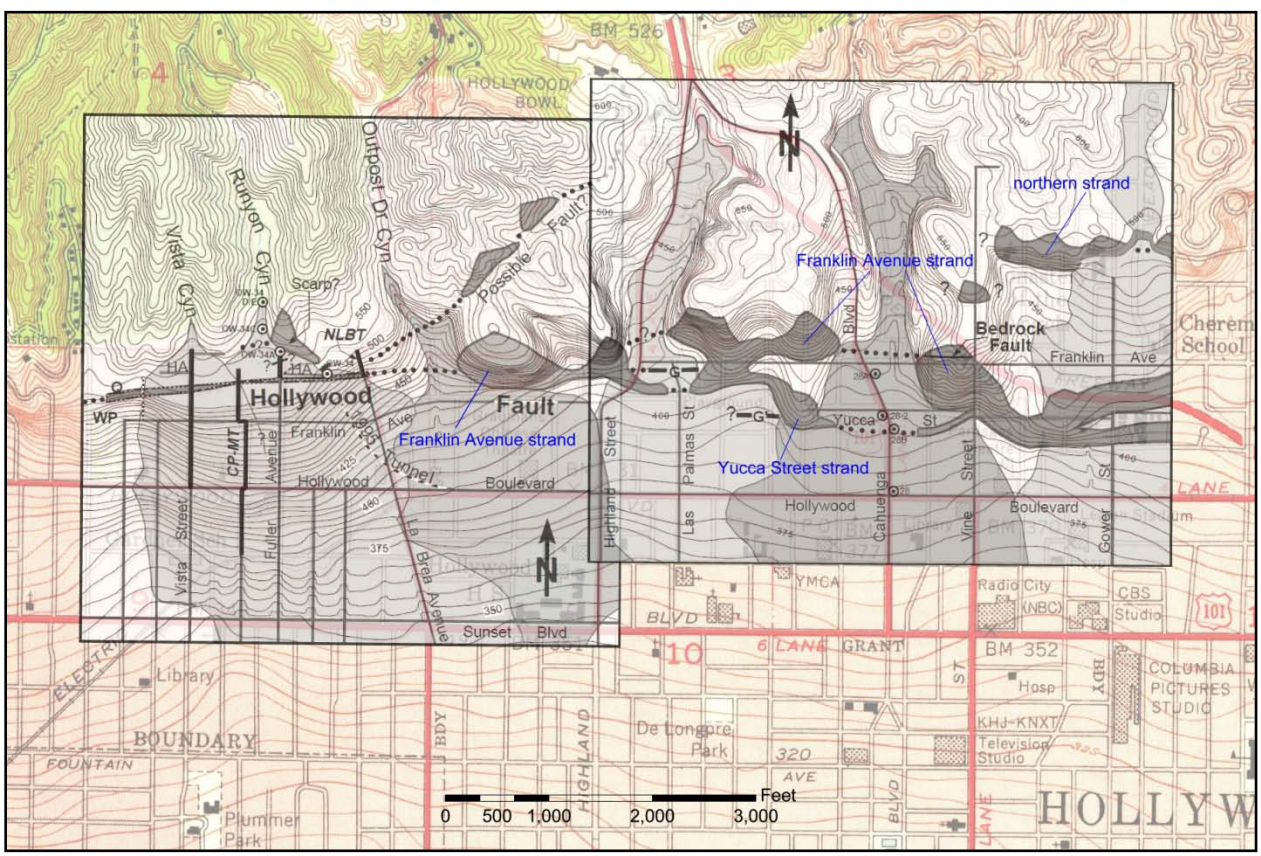


Figure 6 – Detailed mapping and investigations by Dolan *et al.* (1997, their figures 4 and 6), shown overlying a 1953 topographic map base of the Hollywood area. "G" indicates groundwater barrier. Dark shaded areas indicate fault scarps. This historic topographic map is composited from 1923-1925 plane table surveys, with a 5-foot contour interval up to the 500 foot elevation contour and is similar to the topographic data set used by Dolan *et al.* (1997).

Hollywood - Vicinity of La Brea Ave

Earlier work by Crook et al. (1983) and Crook and Proctor (1992) included trenching at a site within the Hollywood area at Wattles Garden Park at Franklin and Sierra Bonita Avenues (locality 9, Plate 1). They found several thin shallowly north-dipping gouge layers and a thicker (60+ cm) gouge mass that they assume to be part of the Hollywood Fault Zone. There were no datable materials. A second trench, further down the fan surface found no faulting but was likely too shallow to be conclusive.

At locality 10, detailed studies by Dolan *et al* (1997), and Earth Technology Corporation (1993) took place at three locations in conjunction with the 1993 MetroRail Boreholes/subway tunnel investigations along the Hollywood Fault Zone: Camino Palmero-Martel Avenue Transect; North La Brea Avenue Transect; and at Vista Street, as shown on Figure 7. Also included in this study were data from Los Angeles County storm drain trenches (Vista Street and Fuller Avenue), and the La Cienega and San Fernando Valley Sewer Relief Tunnel project (1953, as reported by Earth Technology Corp, 1993) west of Vista Street.

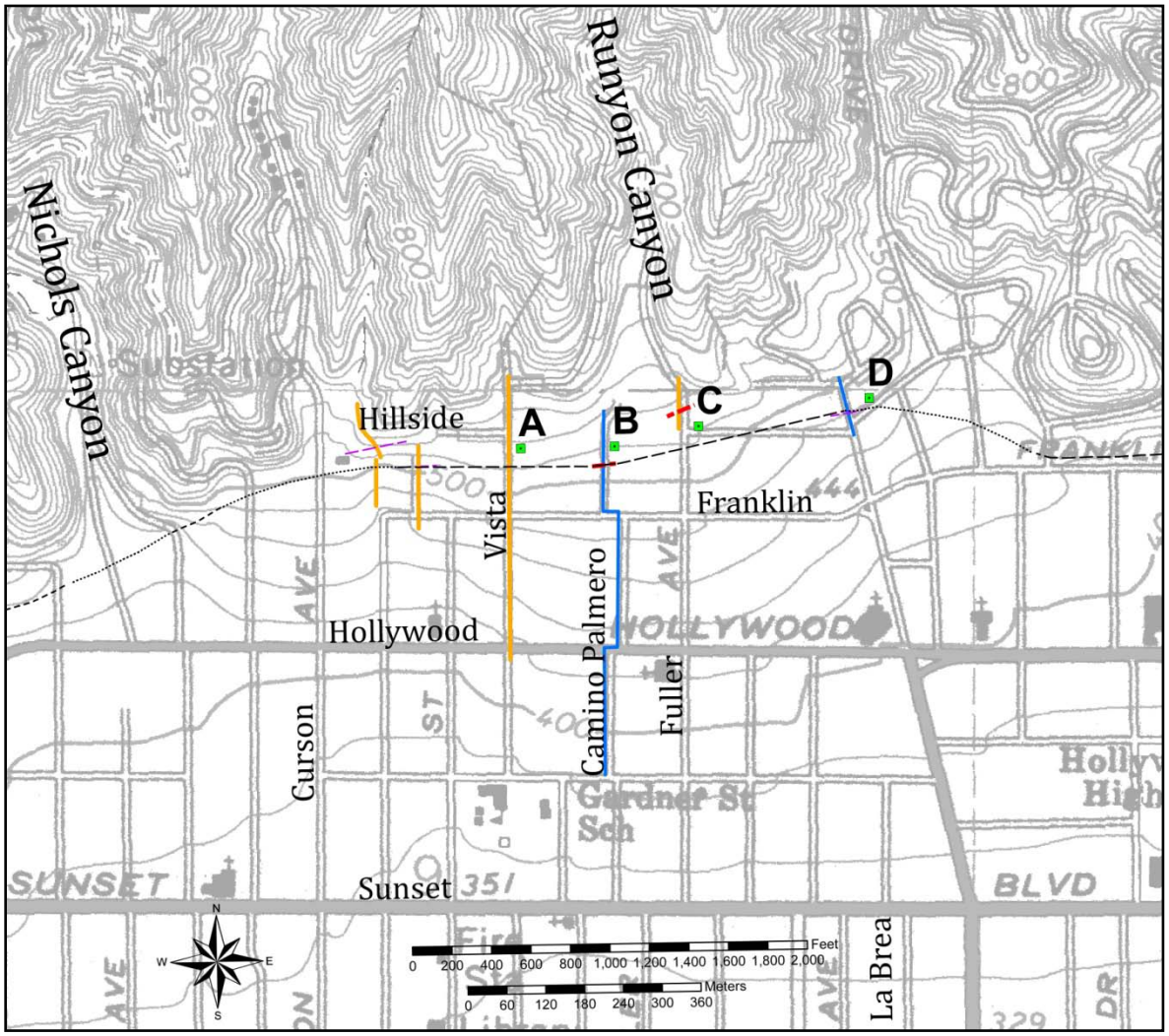


Figure 7 - North Hollywood area, locality 10, showing location of shallow trench data (gold lines) and borehole transects (blue lines) completed for the Metro Red Line study (Earth Technology Corporation (1993), sewer relief trenches and storm drain tunnel. Green squares indicate study localities: A - Vista Street storm drain transect; B - Camino Palmero-Martel Avenue Metro RedLine transect; C- Fuller Avenue storm drain trench; D - La Brea Avenue Metro RedLine transect. Dashed red line segments along transects indicate the active fault trace or projection based on supporting data from adjacent sites. Purple dashed lines represent fault strands of indeterminate age. Black lines are faults recommended herein for zoning.

Along the Vista Street storm drain transect (Figure 7, site A), the Hollywood Fault was not encountered in the ~1400 foot long trench, however (Dolan *et al.*, 1997) reported the depth of this trench was likely insufficient to observe the fault trace. The La Cienega and San Fernando Valley Sewer Relief Tunnel project (1953, as reported in Earth Technology Company, 1993) along Sierra Bonita west of site A, encountered faulted granite with gouge and breccia in test borings.

Along the Camino Palmero-Martel Avenue Metro RedLine transect (Figure 7, site B), evidence for faulting included groundwater barriers and quartz diorite bedrock faulted over alluvium, with average dips of ~77° to the north. Dolan *et al.* (1997) and Earth Technology Corporation (1993) reported up to four fault strands with apparent north side-up displacement of the granitic bedrock at depth (Figure 8), however the southern-most strand appears to be the youngest based on offset younger soils. Groundwater elevation changes were reported on the order of 40 or 50 feet across the fault as shown in Figure 8 (inset). This site was further explored (Dolan *et al.,* 2000) with successive bucket auger borings that revealed additional evidence that one, and possibly two surface ruptures had occurred within the past 20,000 years, the most recent event occurring about 7,000 to 9,500 years ago. Additionally, based on the downhole observations made within the boreholes for this study, Dolan *et al.* (2000) reported that all of the fault strands encountered were near vertical with a dip about 85° northward, and that the most recent surface rupture resulted in north-side down separation. This sense of near-surface separation contrasts with the reverse sense at depth, supporting the contention of Dolan *et al.* (1997) that there is a strong component of strike-slip displacement (presumed left-lateral).

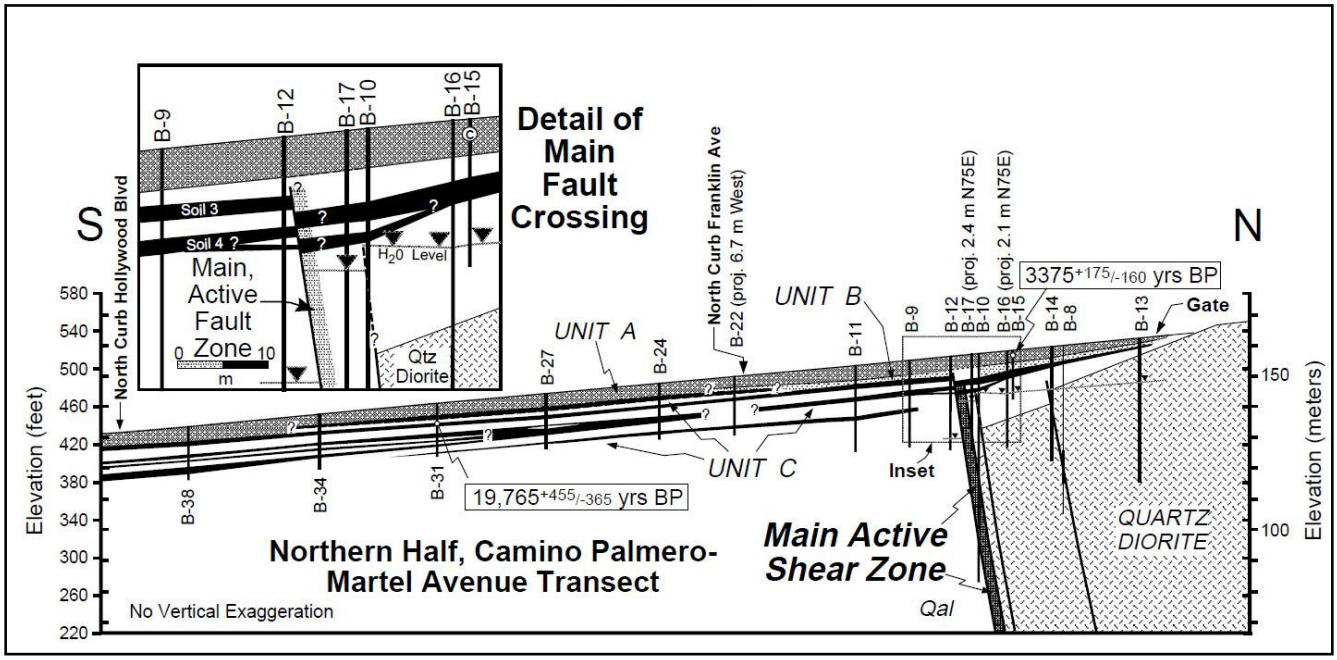


Figure 8 - Cross section of continuously cored boreholes along the northern half of Camino Palmero transect. Note down to the north soil profiles, particularly between B-10 and B-12, across the active fault strand. Depth to groundwater was encountered at about 55 feet on the north, and about 89 feet bgs to the south. Figure modified from Dolan *et al.* (1997).

Storm drain trench excavations by Los Angeles County Department of Public Works along Fuller Avenue (Figure 7, site C), revealed a secondary strand of the Hollywood Fault, oriented N59°E, 74°NW with north-side-up vertical separation (reported by Dolan *et al.*, 1997). This fault displaced the base of a possibly Holocene clayey sand.

At the La Brea Avenue Transect (Figure 7, site D) evidence for faulting includes quartz diorite apparently thrust over Quaternary alluvium, similar to the Camino Palmero site (Dolan *et al.*, 1997; Earth Technology Corporation, 1993). Shallow groundwater was encountered north of the fault at depths between about 10 feet to 43 feet, whereas south of the fault groundwater was not encountered within the upper 200 feet of borings. They reported the fault dip steepens with depth, ranging from 25° to 60° to the north.

Hollywood - Vicinity of Highland Avenue

A study by MTC Engineering (2012c), located on the southwest corner of Bonita Terrace and Orchid Avenue (locality 11, Plate 1) found no clear evidence of faulting, although a zone of steepening of the bedrock at depth between two bucket auger borings was noted in our review. They encountered basaltic volcanic bedrock, and they reported clean sandy gravel in each of the bucket auger borings was in sharp contact with the bedrock. Rounded cobbles up to about 10-inch diameter in a fine- to coarse-grained sand matrix, and clean sand layers were encountered directly overlying the bedrock. Our review of this data suggests the marine abrasion platform previously discussed for sites in West Hollywood (localities 1 through 6) may exist in this part of Hollywood.

In studies by Leighton Consulting (2011) and GeoPentech (2013a; 2013b) at 1805 Highland Avenue, evidence was reported for at least three faults at this site (locality 12). Groundwater steps and discontinuous stratigraphy across the site suggest several fault strands may exist within a broad zone of faulting at this site. Three fault strands appear to displace an earliest Holocene/late Pleistocene horizon (approximately 11-14 thousand years old) and at least one of the strands may displace late Holocene sediments (Geopentech, 2013b). Studies are on-going to further characterize the location and orientation of the fault strands, recency of activity, and how these features relate to faults mapped at the site directly to the east.

Studies performed at 1840 Highland Avenue (locality 13) by LAW/Crandall (2000) and GeoPentech (2001a, b; 2013c) found evidence of several well-constrained fault strands crossing the northern portion of the site. The faults in the northern and central portion of the site were judged to be active based on three distinct groundwater steps and offsets in stratigraphic units (including Holocene deposits) observed in continuous core borings and CPT transects. They reported faulting consisted of steeply north-dipping faults (about 80^0) for these northern strands, and have established a building setback zone. In the southern portion of the site, they reported continuous Holocene and Pleistocene soils and stratigraphic units underlie this portion of the site, precluding any additional young faulting. Just to the east of this site, at Las Palmas St., unpublished studies cited by Crook and Proctor (1992) found a 30-foot difference in groundwater levels between two borings on opposite sides of this fault zone.

A study for the Los Angeles MetroRail project (Converse *et al;* 1981, 1983) found evidence that the Hollywood Fault is located south of Yucca Street at Cahuenga Boulevard (locality 14). Their boring #28B, also described by Crook and Proctor (1992), encountered alluvium to a depth of 120 feet, followed by 10 feet of brecciated sandstone, alluvium and siltstone, which in turn overlies alluvium to the total depth at 205 feet. The location for this fault corresponds well with differences in groundwater reported at locality 15 to the east, and a groundwater barrier just south of Yucca Street to the west (F. Denison, 1991, p.c. *in* Dolan *et al*., 1997).

Hollywood - Vicinity of Hollywood Boulevard and Vine Street

Geotechnical studies were done by Langan and Associates (2012a; 2012b) for the proposed Millennium Hollywood development located south of Yucca Street, between Ivar Avenue and Argyle Avenue (locality 15). Although faulting was not specifically identified in these reports, our review of the subsurface data from several borings indicated groundwater depth differences across the site as well as significant differences in sub-surface materials that support the presence of a fault beneath the site.

Borings from an adjacent project by Group Delta (2006) located at the southwest corner of Argyle Avenue and Yucca Street (locality 16), revealed groundwater elevation differences across the site. Review of this data when compared to borings from the adjacent sites, also suggest a significant difference in groundwater elevation between this project and the Hollywood Millennium site to the south (locality 15).

Just east of Argyle Avenue and north of Hollywood Boulevard (locality 17) geotechnical studies were done for the Blvd6200 project (Geotechnologies, Inc., 2006 and 2013). Although faulting was not specifically identified in these reports, a strong break in slope existed across the northern portion of this parcel that has been interpreted as a fault scarp by previous researchers as well as in our review and field reconnaissance. Additionally, geotechnical borings drilled for the project encountered higher groundwater levels in the northern portion of the site, and deeper groundwater levels in the southern portion of the site with recommendations made for a dewatering system. A review of the boring logs and cross sectional analysis reveals the stratigraphy does not appear very continuous in this area, and the drop in groundwater level appears to correlate well with the break in slope at the surface. These two pieces of evidence suggest active faulting exists along a west-northwest trend at this location.

West Los Feliz area

Only one geotechnical study has come to our attention in this area which might bear on the presence of active faulting. A study was conducted by Pacific Soils Engineering (1961), for tract development located north of Los Feliz Boulevard, between Fern Dell Drive and Winona Boulevard at locality 18. They identified a northeast-trending bedrock fault at the northern end of the property, and although the fault appeared to juxtapose granitic basement rock against alluvium, the fault was judged to be not active. A water seep was noted after grading (Pacific Soils Engineering, 1962) that was not on the identified fault, but it did lie along an interpreted geomorphic scarp within the alluvial fan deposits, as noted in our review of vintage air photos (discussed later in this Fault Evaluation Report). Previous mapping by Neuerburg (1953) in this area indicates two roughly parallel fault traces that were mapped in the granitic bedrock northeast of the site and likely project toward this development. The lack of any geomorphic expression in crystalline rock, as well as their location and orientation, suggest that these two fault traces are not active.

Los Angeles River/Atwater Area

Along the west side of Riverside Drive near Los Feliz Boulevard (locality 19), two fault/geotechnical studies were completed by AMEC (2012, 2013) for the City of Los Angeles Northeast Interceptor Sewer (NEIS) project. The 2013 study included data from two seismic reflection surveys, performed by Advanced Geoscience, Inc. (2013). These seismic surveys

identified at least 6 fault traces which dip steeply (north and south) and are interpreted to include the north-dipping main trace of the Hollywood Fault Zone. Advanced Geoscience, Inc. (2013) reports that the main fault and several secondary faults appear to be trending to the east, based on two sets of seismic data. Evidence for faulting found in borings along the transect line includes: thickening of young alluvium across several borings within the fault zone, a thickening and offset of older alluvium deep within closely-spaced borings, and deeper offsets within sedimentary bedrock (Puente Formation) and quartz diorite. Artesian groundwater conditions are also reported within a narrow zone as noted in a cross-section prepared by the City of Los Angeles, included here as Figure 9.

In the Atwater area, well data as reported by State Water Rights Board (1962) indicate a steep drop in groundwater levels near the mapped fault trace. They reported shallow Puente Formation bedrock was encountered in borings drilled on the north side of a concealed fault trace, and also noted rising water levels in the area of Los Feliz Boulevard. Fault displacements were postulated to have affected the base of the valley fill within the Los Angeles River narrows area, notably where a small bedrock knob is present north of the fault and has “created a constriction in the water-bearing materials” and a depression in the groundwater level immediately to the south. Further, they reported fairly thick packages of clay-rich sediments predominate to the north, and gravelly sands to the south, generally near San Fernando Road and the northern projection of Silver Lake Boulevard.

Williams and Wilder (1971) reported a steep south-facing groundwater gradient exists about half way between the Forest Lawn wells (near Glendale Blvd and San Fernando Road), and the Pollock Field (near Garden Ave. and Fletcher Dr.). In their cross section, they indicated a gray organic clay layer is vertically offset by a steeply south-dipping fault, with down to the south displacement of the clay. Converse, Davis and Associates (1970) reported on the “top of clay” layers within groundwater wells in the Atwater area. Review of the well logs indicated a groundwater level differential and top of clay differential in the area near Fletcher Dr. and San Fernando Road. Our own review of several of the well logs from the Converse, Davis and Associates report, reveals thick clay zones at depth that appear to be discontinuous in the vicinity of Silver Lake Boulevard and La Clede Avenue. This location is similar to the groundwater differential reported by Williams and Wilder (1971).

Gravity data from Chapman and Chase (1979) reveals a steep gravity gradient along the fault that coincides at depth with the eastern projection of the Hollywood Fault Zone.

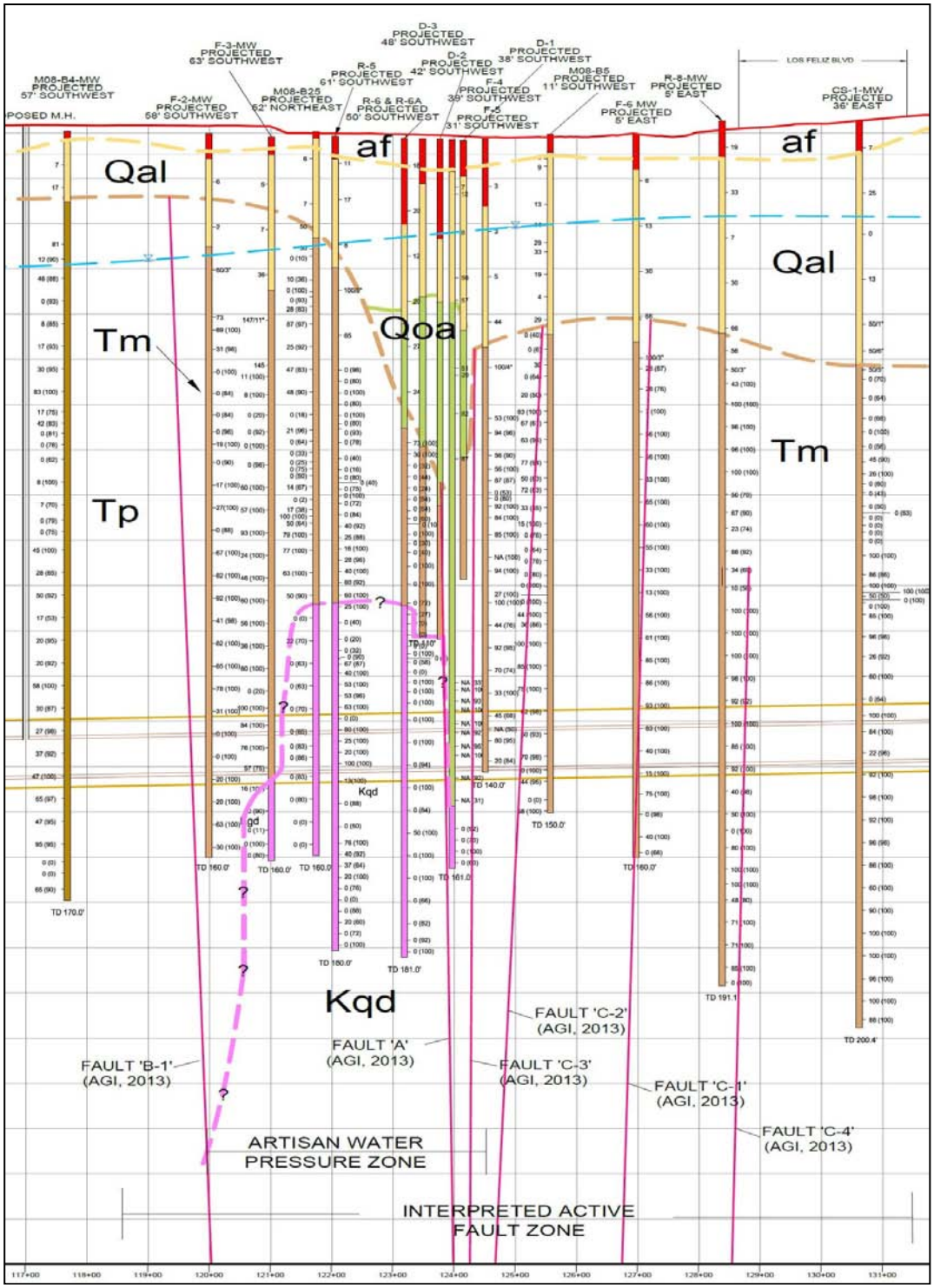


Figure 9 – Cross section with Fault 'A' interpreted as the main trace within the active fault zone. Note differential thickness of recent alluvium, and depth of older alluvium between Fault 'A', and Fault 'C-3'. Kqd = Cretaceous quartz diorite; Tp = Puente Formation; Tm = Modelo Formation; Qoa = Quaternary older alluvium; Qal = Quaternary alluvium; af = artificial fill.
Cross section modified from City of Los Angeles Geotechnical Engineering Group (2013). Grids are 10' in height and 100' in width.
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AERIAL PHOTO, LIDAR, MAP INTERPRETATION, FIELD OBSERVATIONS and GEOMORPHIC ANALYSIS

(for referenced localities, see Plate 2)

The following geomorphic analysis is based on review of vintage aerial photographs, topographic maps, LiDAR data and field observations. Field observations were performed during November and December 2013 for approximately 3 days.

DATA SOURCES

Vertical aerial photographs – 1927-1928

Vertical aerial photographs from two flights (1927 and 1928) by Fairchild Aerial Surveys were studied in stereo pairs to identify and interpret landforms along the fault traces. Development of the landscape (grading for streets, houses and other structures) even at this early date make interpretation a challenge. However, many features of the landscape are still discernible.

Historic oblique photographs – 1921-1938

Vintage oblique aerial photographs provided a unique view of the historic landscape, providing illuminating images of much of the landscape prior to full development. These images provided an independent check on the features interpreted from vertical aerial photos and topographic maps. The vintage photos were taken by Spence Aerial Surveys and Fairchild Aerial Surveys and are archived in the Geography Department at the University of California, Los Angeles.

Historic maps – 1926-1928

A remarkable series of topographic maps was prepared in the 1920s for the County of Los Angeles at a scale of 1:24,000. These were published in the atypical format of a 6-minute by 6-minute quadrangle as opposed to the more standard 7.5-minute map format. These maps are notable for two reasons. First, they capture the landscape at a time when much of the local land development had either not occurred or was of a less disruptive nature. Secondly, these maps have 5-foot contours and were drawn by topographers with an excellent sense of landform. As a result, these maps provide a very illuminating view of the landscape and reveal numerous features that are suggestive of tectonic influences. We analyzed the topography as depicted on the Hollywood and Burbank 6-minute quadrangles from 1926 and the Glendale 6-minute quadrangle from 1928 (all at an original scale of 1:24,000).

We prepared an interpretive map from these topographic bases, delineating locally incised drainages and a complex set of nested alluvial fans being shed from the Santa Monica Mountains (Figures 11, 12, 13, 14 & 17). In particular we have made note of abrupt transitions from erosion (the channels) to deposition (the fans) and, where these are aligned with other corroborative or suggestive features, have interpreted fault movement to explain this change in sedimentary regime.

LiDAR

A digital elevation model derived from a LiDAR survey of Los Angeles County (Los Angeles Regional Imagery Acquisition Consortium, 2006) was useful for verifying some of the geomorphic features identified from other sources as well as detecting additional features.

DISCUSSION

To aid discussion we have divided the fault zone, as it crosses the Hollywood Quadrangle, into five segments (Figure 10). The westernmost segment (segment 1), from within the city of West Hollywood, trends northeast along the southern edge of the Santa Monica Mountains, primarily as a single trace. Segments 2 and 3 trend more east-west and are expressed in several near-parallel left-stepping fault strands. Segment 4 trends east-northeast, paralleling Los Feliz Blvd., and consists of at least two sub-parallel fault strands. Eastward from the Los Angeles River we describe Segment 5 which appears to consist of a single surface trace until the eastern boundary of the map.

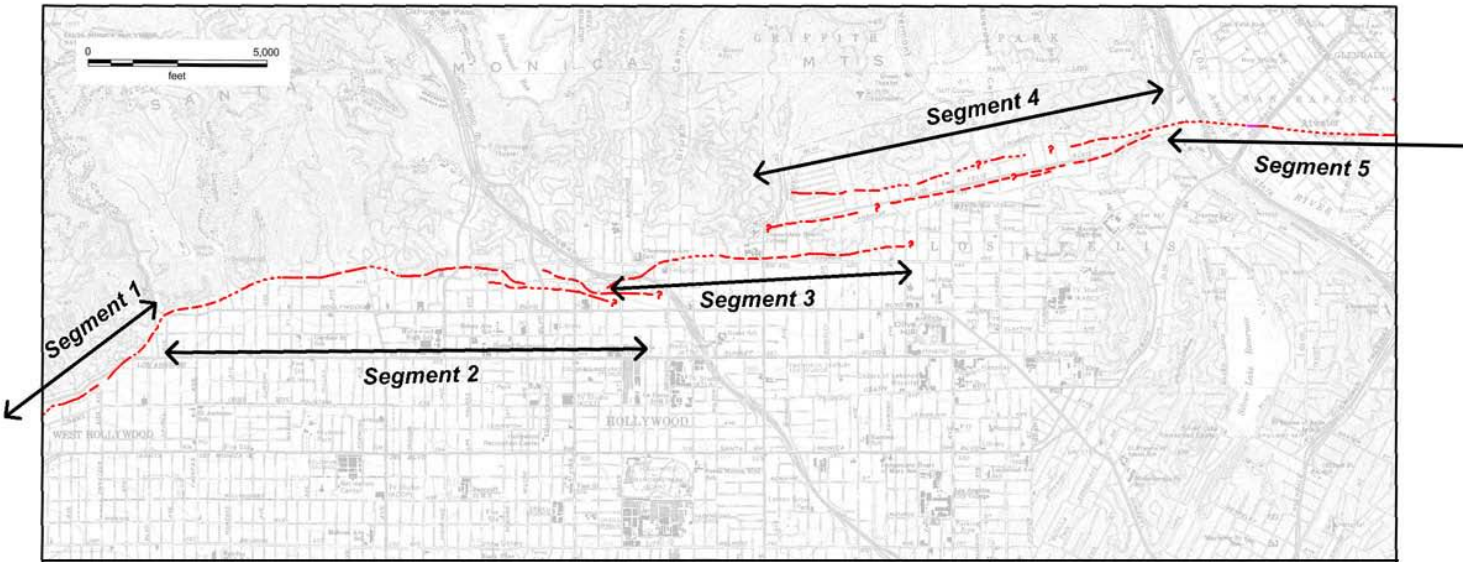

Figure 10 - index to fault segments discussed in the text. Red lines are faults identified for zoning.

Segment 1 extends from the west margin of the map northeasterly to the vicinity of Laurel Canyon (Figure 11). The fault is expressed here by a well-developed scarp along the base of the hills (S1a). Some less-prominent scarps, north of the identified fault, may be related to a paleo-shoreline identified in the area (WLA, 1998c). Several small scarps near the base of the mountain front on Plate 2 (Site A1) are thought to be related to this paleo-shoreline feature. Several subtle slope breaks in the ground surface to the southeast may indicate additional splays, but these are less certain and may just mark the distal extent of fan deposition. A prominent scarp-like feature (S1b) at the edge of the map is crossed, on projection to the west, by fault studies which found no evidence of active faulting along that trend. The young Holocene-age alluvial fan emanating from Laurel Canyon has entirely obscured surface evidence of the fault in that location.

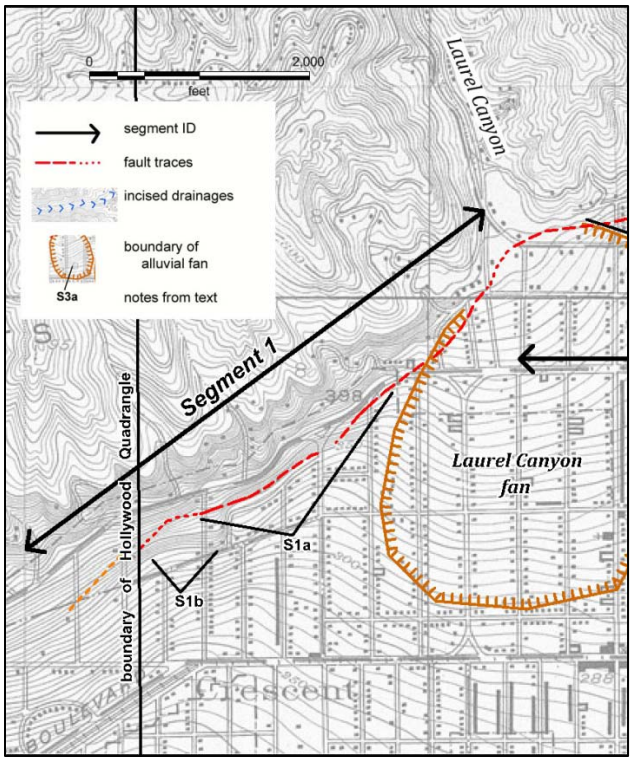

Figure 11 - Geomorphic features along Segment 1. Base map from 1926 Hollywood and Burbank 6' quadrangles.

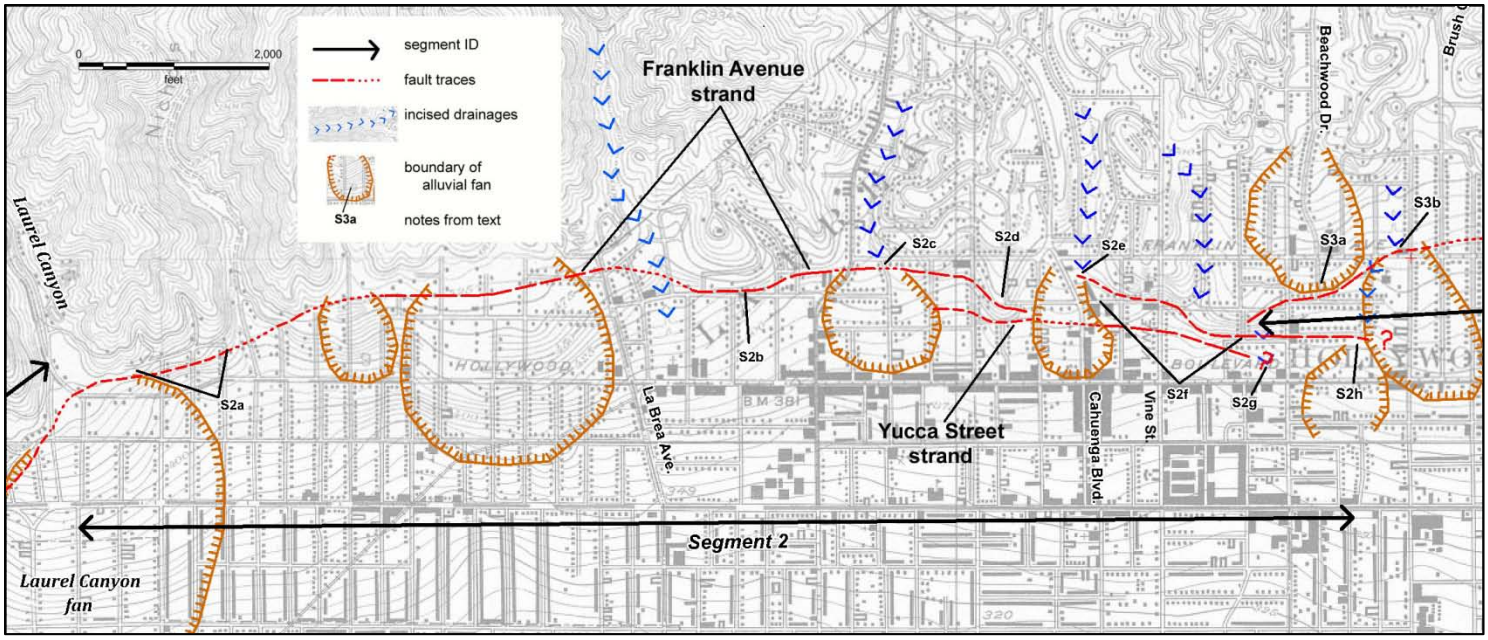

Figure 12 - Geomorphic features along Segment 2. Base map from 1926 Hollywood and Burbank 6' quadrangles.

<u>Segment 2</u> trends east-west from Laurel Canyon to Beachwood Drive (Figure 12). The western portion is distinguished by a slightly sinuous mountain front with small fans emanating from small to medium-sized canyons. The mouths of these canyons are in rough alignment as far east as La Brea Avenue, suggesting some linear structural control, but the fault may be buried and overlapped by fan deposition so that the fault trace would be somewhat south of the current slope break. Oversteepened and eroded slopes at the south end of several intervening ridges are interpreted to be related to faulting. More subtle breaks in slope gradient to the south are possibly related to the distal edges of the small alluvial fans and cannot be ascribed with any certainty to faulting (Plate 2, site A2). The south end of the first ridge to the east of Laurel Canyon (S2a) appears oversteepened and is likely a fault scarp. Dolan *et al.* (1997) also noted the scarp in this area. A break in slope also veers away from this scarp and across a local fan coming off of the slopes, suggesting young displacement. Subtle tonal lineaments (Plate 2) suggest the fault location to the east across the Nichols Canyon drainage.

East of La Brea Avenue the fault bends or steps southward to create the steep southern front of a prominent knoll (S2b) and several other ridges to the east. Dolan *et al.* (1997) found this Franklin Avenue strand to be the most prominent south-facing scarp in the downtown area. The Yucca Street strand, which exhibits a 5-6 m high scarp, also acts as a groundwater barrier west of the alluvial fan at Cahuenga Blvd.

The drainage from Cahuenga Pass, as it crosses this trend, appears as if it is deflected in a left-lateral sense (S2c) and very shortly changes from an incised channel to a depositional fan, suggesting a change in base level at this point. Another southward step is suggested by the south-trending ridge west of Cahuenga Boulevard (S2d) and then expression is lost across the drainage descending from the Hollywood Reservoir area. However, the channel from that canyon appears to have been incised above the mouth of the canyon (S2e), switching to a depositional mode to the south, which suggests a base level change at a fault at that location. The fault location eastward is indicated by a very steep south margin to the hillslopes (S2f). A distinct change in slope gradient is also visible across several north-south streets in this area in both site reconnaissance and air photo interpretation, including Vine and adjacent streets (Plate

2, site A3). The eastern extension of this fault coincides with the initiation of a small depositional fan indicated in the vintage topographic map (S2h), with an incised drainage visible just to the north in the 1927 and 1928 aerial images. A southern fault splay, indicated to the west from geotechnical studies (adjacent to Vine Street), is supported by the upstream incision of another small drainage near the projected crossing of that fault (S2g).

The Hollywood Bowl Fault is mapped north of Segment 2. Trending northeast, it is discontinuously marked by erosional fault line features, such as topographic saddles and some degraded slope facets (see features identified by Dolan *et al.*, 1997, depicted herein on Plate 2, site A4). These geomorphic features closely follow the mapped fault contact between granitic bedrock to the north and Cretaceous and Tertiary sediments to the south.

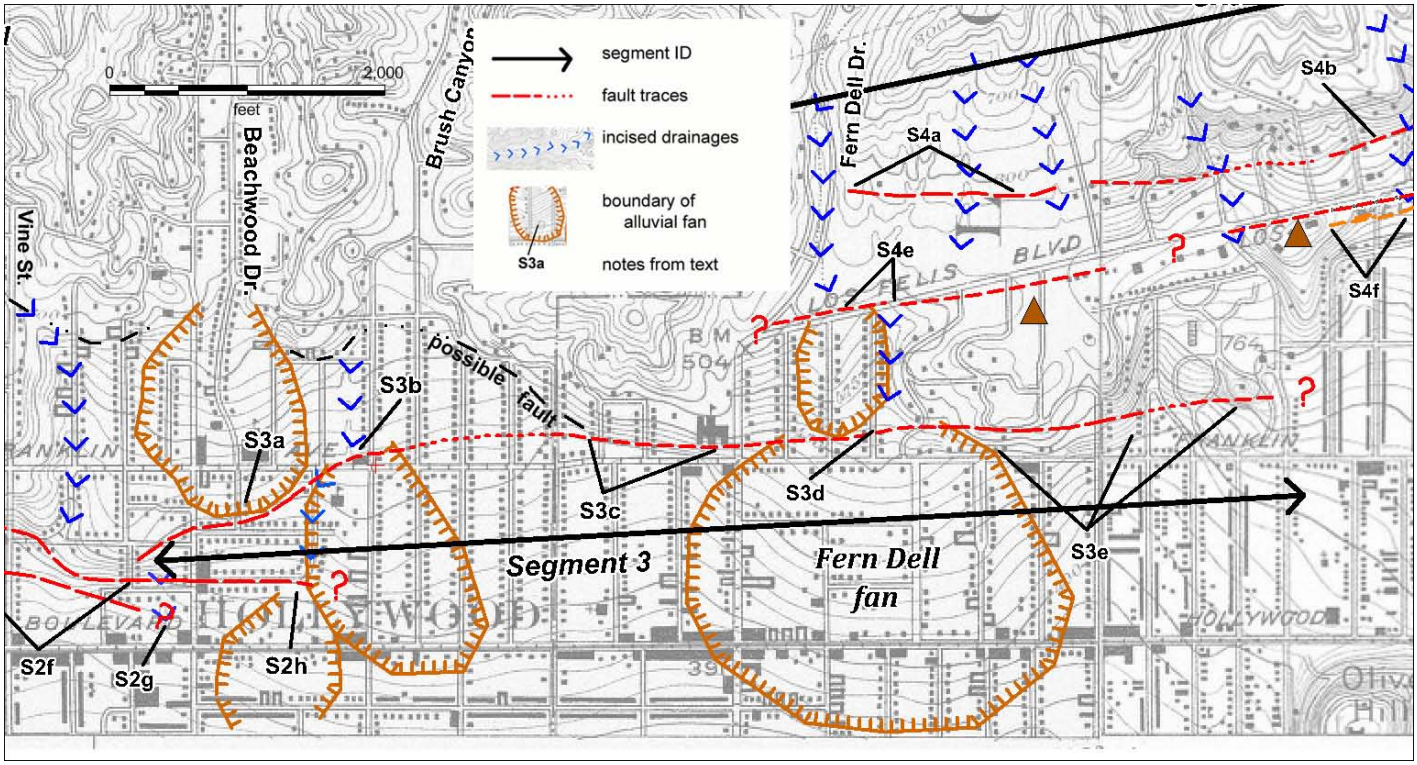

Figure 13 - Geomorphic features along Segment 3. (brown triangles indicate saddles discussed in Segment 4) Base map from 1926 Burbank and 1928 Glendale 6' quadrangles.

<u>Segment 3</u> overlaps Segment 2 at its west end and Segment 4 at its east end (Figure 13). It appears to function as a transition in the stepover between those two segments. The western end is suggested by a slight steepening of the fan gradient below Beachwood Drive and Franklin Avenue (S3a), and an incision to deposition transition just to the east (S3b). The main alluvial fan of Brush Canyon conceals the trace for a short distance and then the approximate fault location is indicated by the abrupt slopes just north of Franklin Avenue (S3c, S3e). This prominent scarp is also marked by the initiation of fan deposition from the Fern Dell drainage (S3d) as well as a break in the fan gradients. Geomorphic expression of this fault segment dies out about 0.5 km west of Vermont Avenue.

There is another line of subdued and discontinuous scarps, mapped by Dolan *et al.* (1997; also see Figure 6), that splays west-northwest from the main fault trace. This possible fault appears to die out with no expression across Brush Canyon or at the Hollywood Reservoir

drainage, although the Beachwood fan might be observed to begin at the postulated fault. Based on aerial photo and field reconnaissance we suggest that these features may be merely related to the break in slope along the mountain front, and not directly related to Holocene faulting.

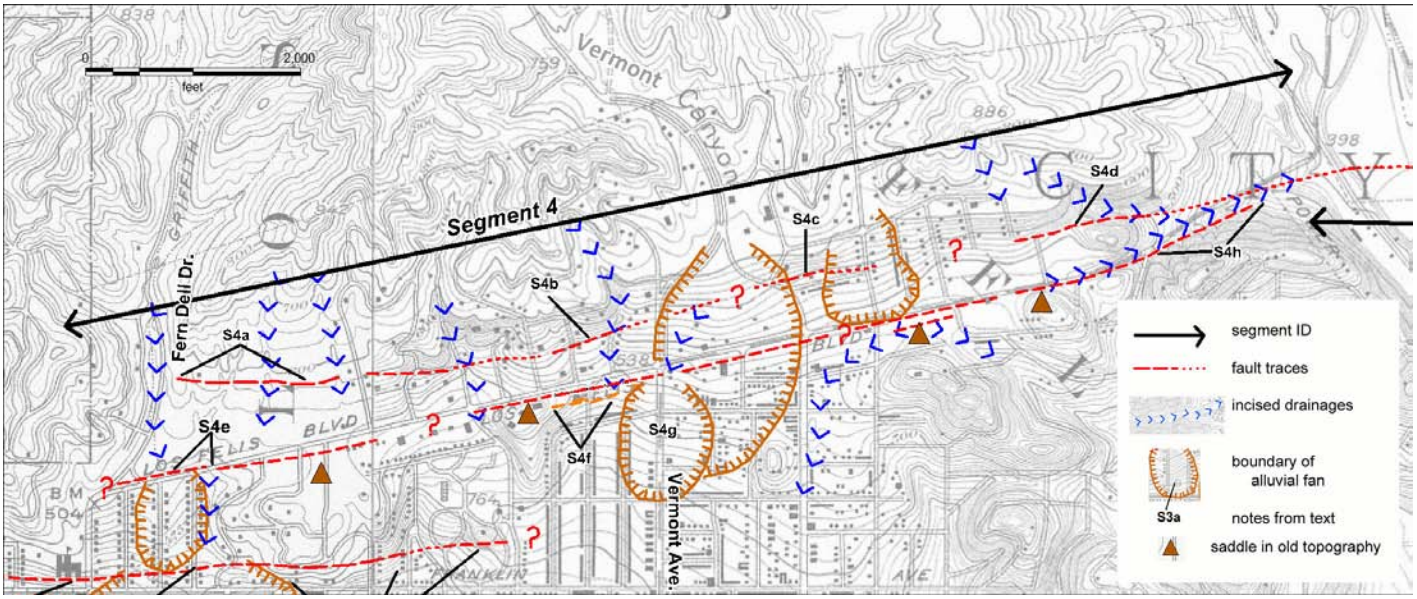

Figure 14 - Geomorphic features along Segment 4. Brown triangles locate prominent saddles along the Los Feliz Boulevard fault strand. Base map from 1926 Burbank and 1928 Glendale 6' quadrangles.

<u>Segment 4</u> overlaps Segment 3 at its western end and there are geomorphic indications of at least two parallel faults in this segment (Figure 14). This segment is grossly indicated by an east-northeast trending trough that has been breached by erosion. Los Feliz Boulevard follows this trough.

A northern strand is defined at its western end by an offset fan surface (Plate 2, site A5) that is observable in vintage aerial photography as shown on Figure 15. There is at least one principal fault indicated by the steepest drop in the surface (S4a) and possible secondary faults between the principal strand and Los Feliz Boulevard indicated by additional local breaks in the slope gradient. Further east, this fault, as a single strand, is intermittently expressed by steepened slopes along trend (S4b, S4c); the fault is locally overlain by younger fans, such as that emanating from Vermont Canyon. At its eastern end it passes through a local topographic saddle (S4d) and then appears to join the Los Feliz Boulevard fault strand.

What we consider the principal active fault strand has few sharply defined indicators but is taken as the axis of the geomorphic trough that is followed by Los Feliz Boulevard. The general nature of this trough is indicated by several remnants of its eroded south margin with prominent saddles (Figure 14, brown triangles) along the fault trace, and is further confirmed by several profiles constructed from the LiDAR DEM.

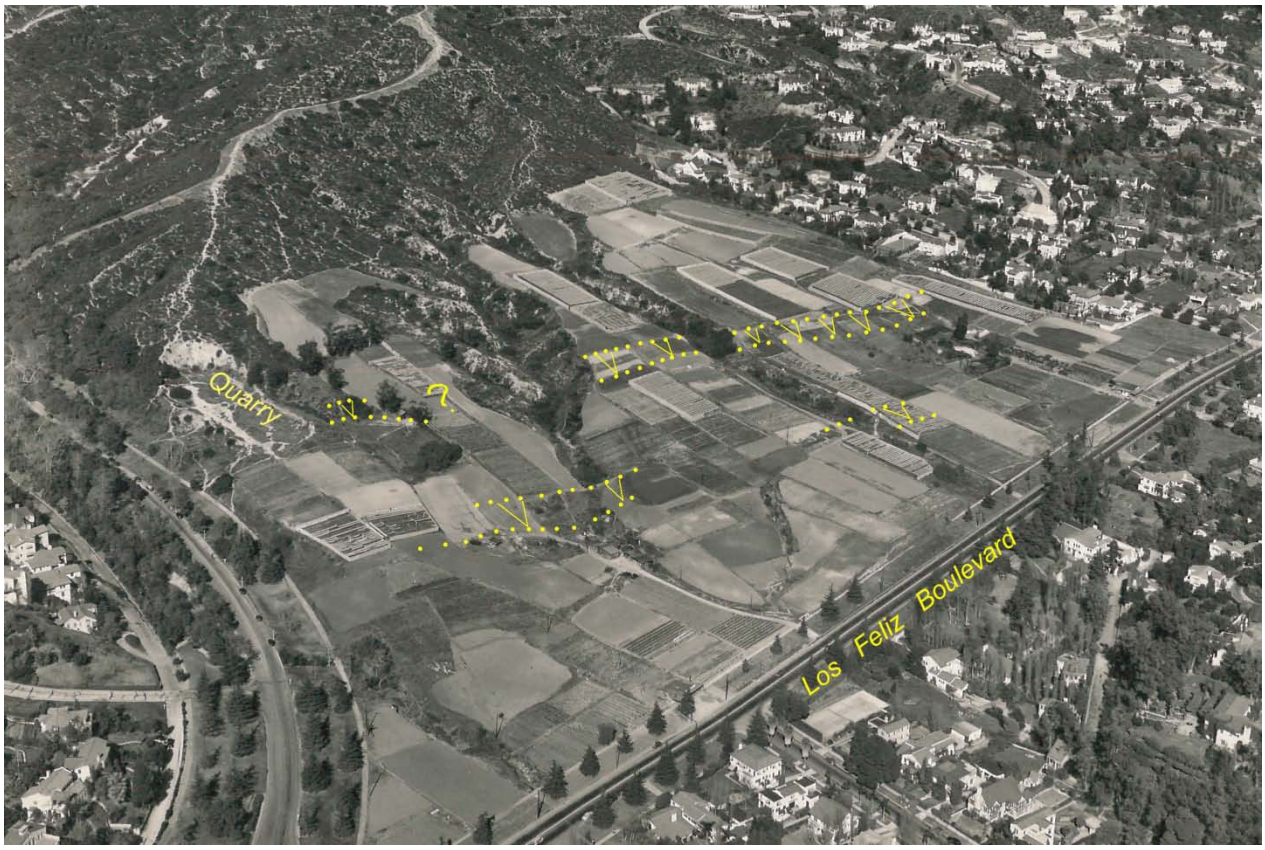

Figure 15 - Oblique aerial view of the Mead Estate from 1928, showing principal and minor scarps (Yellow dotted lines) extending across the property. Site is located at the west end of Los Feliz Boulevard (Plate 2, site 5). (Photo by Fairchild Aerial Surveys, 2/25/1938, from UCLA Geography Department).

There are several additional detailed observations that provide better location control and interpretive confidence for this fault. At locality S4e there is an apparent left-lateral offset of the Fern Dell drainage that is on the order of 130 m. A small, steep and inferentially young fan had, prior to modern development, started to build below the cut-off segment of this drainage that lies upstream. Further east, just west of Vermont Avenue, an oblique aerial photo from 1921 reveals some lineaments in a then-recently graded slope below Los Feliz Boulevard (S4f; Figure 16). These lineaments, parallel to the road, may be faults. At Vermont Avenue there is a small young fan that appears to be forming just south of the fault (S4g). Contours on the 1928 topographic map suggest a subtle swale may have been evolving just upstream of the fault at this point across an older, now abandoned, fan that drained Vermont Canyon. The fault location is suggested at the east end of this segment by a linear eroded drainage (S4h) and a coincident tonal lineament visible in the vertical aerial imagery.

A third fault strand, still farther south, may be an eastern extension of Segment 3 but it lacks any youthful expression in this area. Although this strand was previously mapped by others, as shown on Plate 1, field checking and vintage air photo review noted only gentle fan slopes and granitic bedrock outcrops with no indication of any youthful fault-related features along the trace.

Figure 16 - Oblique aerial photo near the intersection of Vermont Ave. and Los Feliz Blvd. showing fresh grading south of Los Feliz. Blvd. Lineaments (highlighted with red) are possible fault traces. (Photo by Spence Aerial Photos, circa 1921; from UCLA Spence collection).

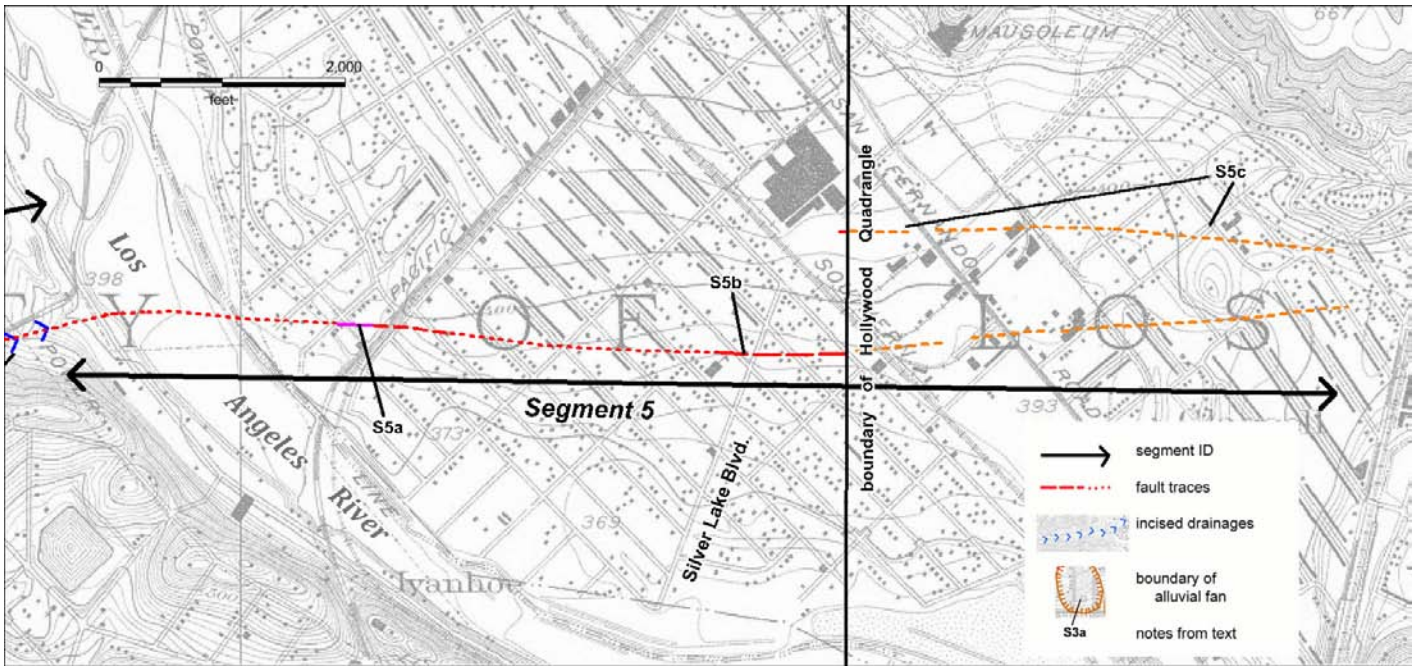

Figure 17 - Geomorphic features along Segment 5. Base map from 1928 Glendale 6' quadrangle.

Segment 5 continues eastward across the abandoned flood plain of the Los Angeles River in the Atwater area (Figure 17). An elongate knoll, just east of the river, has its southern terminus at the inferred fault location (S5a) where there are also some faint tonal lineaments and a possible scarp along the fault. Farther east the Hollywood Fault is expressed as a series of low, discontinuous breaks in the flood plain surface with south side down orientation, as previously observed by Weber (1979; 1980). At the eastern edge of the quadrangle the drop is as much as 2-3 m (Plate 2, site A6). There is a possible pressure ridge where the fault crosses Silver Lake Boulevard (S5b); it is visible in the elevation of several residential lots in spite of the roads having been graded level. Although scarps are noticeable in several of the streets, some of the previously mapped features (scarps and lineaments) have been obscured by development.

East of the map boundary there are additional features to support the location of the fault as it steps northward, including aligned tonal and vegetation lineaments (S5c). The pair of faults appear to define a knoll evident in the older topographic map; the knoll is separated from the adjacent hills by the northern strand.

DISCUSSION and CONCLUSIONS

Segment 1

The trace of the Hollywood Fault has historically been mapped very close to the mountain front in this area (Hoots, 1930; Dibblee, 1991; Dolan *et al.*, 1997). Recent geotechnical studies within the city of West Hollywood have located the principal active trace of the fault at several sites (see Plate 1; figure 3). These studies have also shown that, although the fault is concealed by young sediment in many areas, the Holocene deposits are quite thick and have been displaced by recent faulting (Harza, 1998; ECI, 2001a; LAW/Crandall, 2001; WLA, 2004)). Some scarps, north of the principal fault trace, have been shown to be related to an ancient shoreline and these are not associated with any evidence of active faulting. Several subtle slope breaks further out from the mountain front are ambiguous in origin and not directly attributable to faulting.

Segment 2

This segment of the fault zone is generally located by relatively abrupt, though intermittent, scarps. The fault location has been confirmed by several studies, including those by Dolan *et al.* (1997, 2000), Geopentech (2001 & 2013c) and LAW/Crandall (2000) and studies for the Los Angeles Metro Rail subway project (Earth Technology Corporation, 1993). Additional locations are inferred from subsurface data generated in other geotechnical investigations (Langan 2012 a, b; Group Delta, 2006; Geotechnologies, 2006, 2013). Holocene activity has been documented by Dolan *et al*. (2000) and is also suggested by the interpreted fault effects on young fan development.

The Hollywood Bowl Fault, although identified in bedrock mapping (Dibblee, 1991), and possible scarps mapped by Dolan *et al.* (2000), has only very subdued geomorphic expression that is likely erosional in origin or at least erosionally modified.

Segment 3

Segment 3 partly follows the mapping of Dolan *et al.* (2000), but we have made some different associations across the Brush Canyon fan, connecting those traces that seem to have the strongest influence on recent fan deposition and incision. The fan incision/deposition transitions provide some of our fault location evidence, in addition to interpreted scarps at the base of the hills.

The effects on the fans, as well as an inferred role in transferring slip between segments 2 and 4 suggest Holocene activity on this segment. This fault has been mapped to continue eastward, to join with a bedrock fault mapped just west of the Los Angeles River (Dibblee, 1991; Dolan *et al.,* 1997), but we see little evidence of activity on this eastern extent and, instead, infer that slip is being transferred to the faults of Segment 4. The northern trace of Dolan *et al.* (2000), which cuts across the mouth of Brush Canyon and Beachwood Drive, does not appear as youthful and dies out to the west with little evidence of fault displacement.

Segment 4

This is a somewhat enigmatic fault segment, having at the same time the least geotechnical evidence and little detail in the way of previously mapped fault traces but having some of the strongest geomorphology to indicate the presence of the fault zone.

The northern fault trace was shown by Dibblee (1991) as entirely concealed. Dolan *et al.* (1997, 2000) mapped the fault on the basis of the steepened slopes to the north. Weber showed a less continuous surface expression. We could verify discontinuous weak scarp segments approximately as shown by Weber, but the best evidence of this fault is in the scarps and offset fan surface visible in the vintage images at the west end of the fault (e.g. Figure 15). However, no corresponding features could be seen on further projection to the west. We judge this fault as likely Holocene based on the prominent scarps and its association with other elements of the fault zone.

What we infer to be the principal trace of the fault, roughly followed by Los Feliz Boulevard, had not been previously identified except for a short lineament mapped by Weber. We note that this lineament defines a subtle geomorphic trough indicated by a few eroded remnants of its south margin. Additional evidence comes from the apparent effect on the Fern Glen and Vermont Canyon drainages.

A southern fault, shown by both Dibblee (1991) and Dolan *et al.* (1997, 2000) about 1/3 of a kilometer south of Los Feliz Boulevard, is well expressed geomorphically to the west (part of Segment 3) and in the bedrock to the east (from Lamar, 1970). There may well be a buried continuous fault here but it lacks geomorphic evidence of recency in the central and eastern portions. It is also possible that the eastern bedrock segment of this fault connects to the zone of differential subsidence and the hypothetical Santa Monica Fault extension of Hill *et al.* (1979), discussed below, but there is no surface or subsurface data to support this connection.

Segment 5

The eastward continuation of the Hollywood Fault across the Los Angeles River valley, and possible connection with the Raymond Fault, has been shown in various locations by Dibblee (1991), Hill *et al.* (1979), and Weber *et al.* (1980). Most of these fault representations are shown as concealed and have been poorly constrained. The trace that we have mapped is based on borings and seismic studies along the west side of the Los Angeles River for the City of Los Angeles Northeast Interceptor Sewer Project (NEIS) by AMEC (2012 & 2013) and Advanced Geoscience, Inc. (2013), and geomorphic features mapped by Weber *et al.,* (1980), and is further supported by several groundwater studies and groundwater data (Converse, Davis and Associates, 1970; State Water Rights Board, 1962; Williams and Wilder, 1971).

Activity of this strand is based on detailed subsurface investigations from the NEIS project, tonal lineaments and breaks in slope observed in vintage air photo review and field reconnaissance, and analysis of subsurface clay layers within the groundwater well data (Converse, Davis and Associates, 1970).

Other Faults

The southern fault zone ("Santa Monica Fault") mapped by Hill *et al.* (1979) (or alternately the North Salt Lake Fault by Hildenbrand *et al.*, 2001), does not have any clear evidence as a surface fault. The zone of differential subsidence identified by Hill *et al.* (1979) is from 130 to as much as 400 meters wide and may be attributed to causes other than active fault displacement. There is no indication in the literature, or in our observations, of Holocene surface rupture along this fault projection.

RECOMMENDATIONS

Recommendations for encompassing faults in Alquist-Priolo Earthquake Fault Zones are based on the criteria of "sufficiently active" and "well-defined" (Bryant and Hart, 2007). The principal traces of the **Hollywood Fault** as shown on Plate 3 are recommended for zoning as they are mostly well-defined and believed to be active. The Hollywood Bowl Fault does not have any indication of recent activity and is not recommended for zoning. The southern strand of segments 3 and 4, south of Los Feliz Boulevard, is only well expressed within segment 3 and the remainder of that trace is not recommended for zoning.

Janis L. Hernandez
PG 7237, CEG 2260
February 14, 2014

Jerome A. Treiman
PG 3532, CEG 1035
February 14, 2014

I have reviewed and concur with the recommendations in this report.
Timothy McCrink
CEG 1649
2/14/2014

AIR PHOTOS AND DIGITAL IMAGERY REVIEWED

Fairchild Aerial Surveys	Flight 113	1927 b/w Stereo-pair	scale 1:18,000 vertical	Frames:74 – 75, 121 – 123, 161 – 164, 188 – 190, 226 – 229, 262 – 264
Fairchild Aerial Surveys	Flight C-300	1928 b/w Stereo-pair	scale 1:18,000 vertical	Frames: K20 – K23, K43 – K47, K72 – K74, K89 – K90, K115 – K118, K141 – K144, K163 – K164, K184 – K187, K200 – K203
Spence Aerial Photography	114, Sec 14	1921	Oblique	Western Ave & Los Feliz Blvd
“	115	1921	Oblique	Vermont & Franklin
“	115	1921	Oblique	Vermont & Franklin – Janss Investment
“	#6126 Sec. 7	06-1924	Oblique	Anthony’s Home – Hollywood, Los Feliz Blvd.
“	#6069	unk.	Oblique	Los Feliz Heights
“	#5750	unk.	Oblique	Los Feliz Blvd. near Vermont, Hollywood
“	#2993	unk.	Oblique	Hollywood north of Avenue between Vermont & Commonwealth
Fairchild Aerial Surveys	Group 31B	2-21-1938	Oblique	0-5476: Mead Estate – looking NE along Los Feliz from Western – Glendale in background
“	Group 31B	2-25-1938	Oblique	0-5497: Mead Estate – looking N from Los Feliz & Western
“	Group 31B	2-25-1938	Oblique	0-5500: Mead Estate – looking E on Los Feliz from Western
“	Group 31B	2-25-1938	Oblique	0-5499: Mead Estate – Los Feliz & Western, looking NE

Additional Imagery:

NAIP (National Agriculture Imagery Program): NAIP imagery from 2009 was used as a reference for interpretation of fault-related lineaments and topography. We used a county-wide image of Los Angeles to locate features identified in historical imagery and rectify geotechnical report maps. The images were viewed within the GIS platform (ArcGIS) and interpretation done directly on screen.

Los Angeles Region Imagery Acquisition Consortium: proprietary dataset, LiDAR data acquired 2006. (1.7 m DEM) http://planning.lacounty.gov/lariac

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* Consulting reports reviewed but not cited have single asterisk.

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CALIFORNIA GEOLOGICAL SURVEY
FAULT EVALUATION REPORT FER 253
SUPPLEMENT NO. 1

THE HOLLYWOOD FAULT
in the Hollywood 7.5' Quadrangle
Los Angeles County, California

by
Janis L. Hernandez
Engineering Geologist
November 5, 2014

INTRODUCTION

The Hollywood Fault zone was previously evaluated by Hernandez and Treiman (2014). Traces of the fault zone were found to be sufficiently active and well-defined for zoning under the Alquist-Priolo Earthquake Fault Zone Act (Bryant and Hart, 2007). A preliminary review map showing the recommended Alquist-Priolo Earthquake Fault Zone (APEFZ) for the Hollywood quadrangle in Los Angeles County was released for public comment on January 8, 2014, and the Fault Evaluation Report was issued February 14, 2014.

The public comment period, during which written comments were received by the California State Mining and Geology Board (SMGB), was scheduled to end April 8, 2014, but was extended until May 15, 2014. These public comments were made available to the State Geologist on May 16, 2014, and were formally transmitted to the California Geological Survey (CGS) with comments and recommendations from the SMGB on August 14, 2014.

The purpose of this supplement to the FER is to review and address these public comments forwarded by the SMGB, comment on additional reports sent to CGS after preparation of the FER, and to comment on field observations of fault trenches and other subsurface investigations by CGS after the public comment period. The location of the study area is indicated on Figure 1 and the reader is referred to FER 253 dated February 14, 2014 for other necessary background material (ftp://206.170.189.144/pub/dmg/pubs/fer/253).

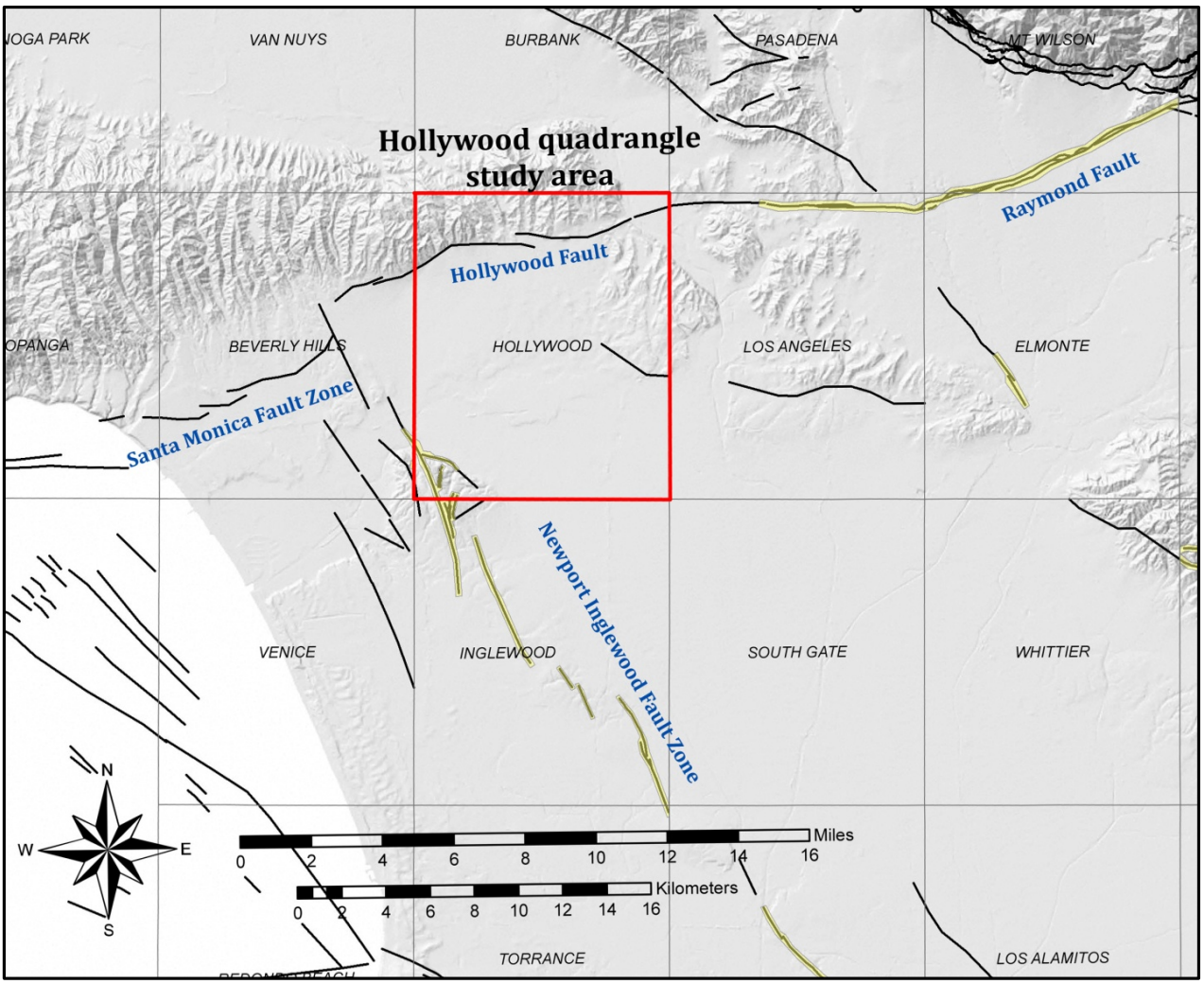

Figure 1- Study area of the Hollywood quadrangle and names of selected faults in the vicinity. Faults within existing official Alquist-Priolo Earthquake Fault Zones are within yellow-shaded boundaries; other faults are indicated in black. Fault strands of the Newport-Inglewood Fault Zone are not a part of this evaluation. Source: USGS Quaternary Fault and Fold Database of the United States (http://earthquake.usgs.gov/hazards/qfaults/).

PUBLIC COMMENTS, AND RESPONSE

All comments received by the SMGB are listed in Table 1. Those comments that present technical data and analysis (noted with "*" in Table 1) are addressed in this supplemental report. Other comments of a non-technical nature fall under authority of the SMGB, and are not addressed herein.

Two of the technical comments noted in Table 1 (a report dated March 11, 2014 from Lettis Consultants International, Inc. (LCI), and a letter with exhibits dated March 11, 2014 by Elkins Kalt Weintraub Reuben Gartside LLP) were superseded by later submittals which included additional interpretation. The April 8, 2014 letter submitted by Elkins Kalt Weintraub Reuben Gartside LLP was a transmittal for the April 8, 2014 LCI report. The latest LCI submittal is addressed here.

Table 1 **Chronological Summary of Comments Received from the State Mining and Geology Board** **Hollywood Quadrangle Preliminary Earthquake Fault Zones Map**			
Comment No.	**Date**	**Commenter**	**Document**
1	February 14, 2014	Elkins Kalt Weintraub Reuban Gartside, LLP	Letter titled "*Request for Extension of Comment Period for Preliminary Alquist-Priolo Earthquake Fault Zone Map for the Hollywood Area of Los Angeles County*"
2	February 26, 2014	Elkins Kalt Weintraub Reuban Gartside, LLP	Letter titled "*Public Hearing to Receive Comments on Preliminary Earthquake Fault Zone Map for the Hollywood Quadrangle, Los Angeles County*"
3	March 11, 2014	Lettis Consultants International, Inc.	Letter report titled "*Technical Memorandum, Boulevard 6200 – Assessment of Fault Mapped in FER 253*"
4	March 11, 2014	Elkins Kalt Weintraub Reuban Gartside, LLP	Letter with Exhibits titled "*Public Hearing to Receive Comments on Preliminary Earthquake Fault Zone Map for the Hollywood Quadrangle, Los Angeles County*"
5	March 13, 2014	Liner	Letter title "*Public Hearing March 13, 2014, Agenda Item XI (New Business) Item No. 3 (Public Hearing)*"
6	March 13, 2014	Beachwood Canyon Neighborhood Association	Comment letter
*7	March 13, 2014	Group Delta Consultants	Letter titled "*Release of Preliminary Review Maps of Proposed New and Revised Earthquake Fault Zones, Earthquake Zones of Required Investigation, Hollywood Quadrangle*"
8	April 2, 2014	Elkins Kalt Weintraub Reuban Gartside, LLP	Letter titled "*Alquist-Priolo Earthquake Fault Zone Map for the Hollywood Quadrangle*"
*9	April 8, 2014	Elkins Kalt Weintraub Reuban Gartside, LLP	Letter titled " *Technical Review Comments on Preliminary Review Maps of Proposed Alquist-Priolo Earthquake Fault Zone Map for the Hollywood Quadrangle*"
*10	April 8, 2014	Cox Castle Nicholson	Letter titled "*Comments on the Preliminary Earthquake Fault Zone Map for the Hollywood Quadrangle*"
11	April 8, 2014	Armbruster Goldsmith & Delvac LLP	Letter title "*Alquist-Priolo Earthquake Fault Zone Map – Hollywood Quadrangle – Public Comment*"
*12	April 8, 2014	Lettis Consultants International, Inc.	Letter titled "*Revised Technical Memorandum, Boulevard 6200 – Assessment of Fault Mapped in FER 253*"
*13	April 18, 2014	David Perry	Comment letter on Fault Evaluation Report FER-253
*14	May 6, 2014	Group Delta	Report titled "*Fault Activity Investigation*"
*15	August 5, 2014	Group Delta	Letter report titled "Summary of Investigations of 4 Sites – Possible Locations of the Hollywood fault within the Draft Earthquake Fault Zones - Hollywood Quadrangle

In addition to the public comments, new geologic/geotechnical information was received and observations were made in the field subsequent to the 90 day public comment period. CGS evaluated as much new data as possible. To allow CGS time to incorporate new data into the map and supplemental FER, consultants working on fault investigations were informed that new data received before September 15, 2014 would be considered.

One report received on September 16, 2014 is considered in this Supplemental FER; data submitted to CGS after that date was not. Both the public comments received, listed in Table 1, and reports sent directly to CGS up until September 16th, as listed in Table 2, are presented in this supplemental report and organized as in the initial FER, that is, comments and data are discussed in this report by fault segment as shown on Figure 2.

Table 2
Summary of Documents Received outside of those submitted to SMGB for the Hollywood Quadrangle Preliminary Earthquake Fault Zones Map

Date Received	Received from	Document
2/7/2014	City of Los Angeles, Dept. of Engineering	Schmidt, P., and Burnett, F., 2014, Geotechnical Investigation of the Northeast Interceptor Sewer Phase 2A (NEIS 2A) Hollywood Fault Crossing, North American Tunneling Association, Paper # 144, 11 pages.
3/20/2014	City of Los Angeles, Dept. of Engineering	City of Los Angeles, Department of Engineering, Fault Crossing Adjusted Borings 031814_PG, Plate 4.pdf.
4/18/2014	City of Los Angeles, Grading Division	Golder Associates, Inc., 2014a, Surface fault Rupture Hazard Assessment, Proposed Residential and Commercial Development 8150 Sunset Boulevard, City of Los Angeles, CA, Project No. 123-92034-02, dated January 27, 2014.
4/18/2014	City of Los Angeles, Grading Division	Golder Associates, Inc., 2014b, Geotechnical Exploration and Recommendations Report, Proposed Residential and Commercial Development, 8150 Sunset Blvd., Los Angeles, CA, Project No. 123-92034, dated March 24, 2014.
5/27/2014	City of Los Angeles, Dept. of Engineering	City of Los Angeles Department of General Services, Standards Division, NEIS II-A Geotechnical Investigation (Fault Study), Lab No. 140-5916, W.O. No. SZC11777, Geotechnical Services File 060097, dated June 2013
5/28/2014	Metropolitan Transportation Authority Library	Converse Consultants, Earth Sciences Associates, Geo/Resource Consultants, 1984, Geotechnical Report – Metro Rail Project, Design Unit A350, May, 1984.
08/22/2014	City of Los Angeles, Grading Division	Bay City Geology, 2014, Fault Study Investigation, Proposed New Single Family Residence, 1922 N. Oxford Avenue, Los Angeles, CA 90027, Project 1535, dated June 10, 2014.
8/22/2014	City of Los Angeles, Grading Division	Byer Geotechnical, Inc., 2014, Geologic and Soils Engineering Update, Fault Rupture Hazards Investigation, Proposed Apartment, 1769 – 1775 North Sycamore Avenue, Hollywood, CA, Project No. BG 21645, dated April 17, 2014.
8/22/2014	City of Los Angeles, Grading Division	Grover Hollingsworth and Associates, Inc., 2014, Geologic and Soils Engineering Exploration, Proposed Site Grading, Dwelling, Pool, Pool House, Guesthouse and Retaining Walls, 7476 Hillside Avenue and 1830 N. Sierra Bonita Avenue, Los Angeles, Project no. GH15737-G, dated May 20, 2014.
8/22/2014	City of Los Angeles, Grading Division	Irvine Geotechnical Inc., 2014, Geologic and Soils Engineering Exploration, Fault Rupture Hazard Evaluation, Proposed Residence, 1894 N. Stanley Avenue, Los Angeles, CA, Project No. IC 12117-I, dated March 14, 2014.
9/11/2014	Group Delta Consultants	Group Delta Consultants, Inc., 2014b, Fault Activity Investigation, 6230 Yucca Street, SW Corner of Yucca Street and Argyle Avenue, Hollywood Area, City of Los Angeles, California, GDC Project No. LA-1161 A, dated September 3, 2014.
9/12/2014	Group Delta Consultants	Group Delta Consultants, Inc., 2014d, Data from Fault Activity Investigation Report, 1750 Vine Street, Los Angeles, California, 90028, GDC Project No. LA-1191, dated September 12, 2014 (rev. 9/14).
9/16/2014	Group Delta Consultants	Group Delta Consultants, Inc., 2014c, Fault Activity Investigation, Yucca-Argyle Apartments, Champion Site, SE Corner of Yucca Street and Argyle Avenue, Hollywood District, City of Los Angeles, California, GDC Project No. LA-1183A, dated September 7, 2014.

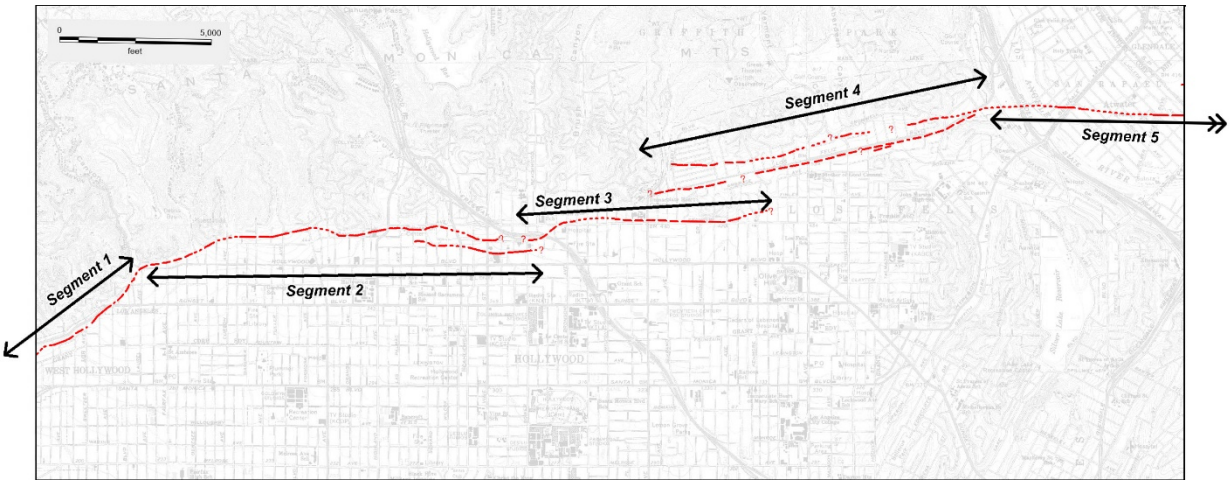

Figure 2 – Index to fault segments discussed in the supplemental report. Red lines are fault traces from the Official Alquist-Priolo Earthquake Fault Zone map, dated 11/6/2014.

ADDITIONAL RECENT STUDIES and COMMENTS

- with appended response in italics.

Site localities also presented on Plate 1 of this supplemental report.

Segment 1

Golder Associates, Inc. (2014a, b) prepared a Surface Fault Rupture Hazard Assessment and Geotechnical Exploration study for a residential and commercial development located on the southwest corner of Sunset Boulevard and Crescent Heights (locality S1-1) as shown on Figure 3. Golder's site evaluation included a CPT transect and hollow stem auger boreholes along the western and southern site boundaries. They interpreted this transect to show continuous alluvial stratigraphy across the site. They reported silts and gravelly sands deposited less than 7 thousand years ago (ka) to depths of about 40 feet. Lower deposits ranged in age from 9 ka to 13 ka at depths of about 60 to 80 feet. They concluded the site has not had major disruption from Holocene faulting.

The data presented by Golder Associates are consistent with the interpretation presented in the initial FER that the Hollywood Fault lies north of this site as shown on the preliminary Alquist-Priolo Earthquake Fault Zone map.

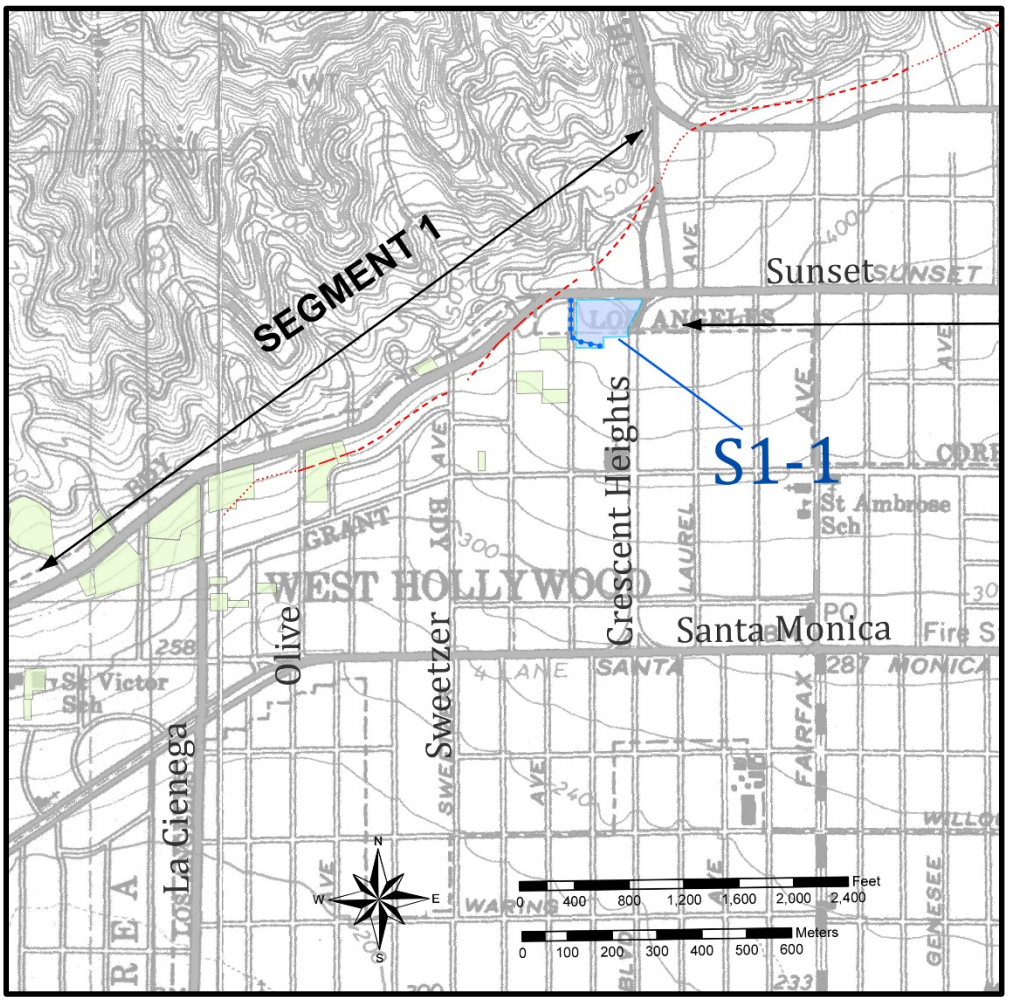

Figure 3 – Study site locality S1-1 indicated in blue shaded area. Boring transect shown as dark blue patterned line. Previous study sites included in the initial FER shown in light green.

Segment 2 (western portion)

Irvine Geotechnical, Inc. (2014) performed a fault investigation for a residential project located near the base of the Santa Monica Mountains at locality S2-1 (Figure 4). Geologic mapping and shallow trenches were performed as part their study. A geologist for the City of Los Angeles observed the excavation during the study, where un-faulted quartz diorite bedrock was exposed.

Grover Hollingsworth and Associates, Inc. (2014) conducted a fault investigation for a project located along the southern edge of the Santa Monica Mountains, near Runyon Canyon at locality S2-2 (Figure 4). They excavated three fault trenches across the site and observed a thin layer of soil overlying quartz diorite bedrock. Caliche-lined faults were observed in Trenches 1 and 3, but clay gouge and slickensides were not observed in the fault zone. With field review and discussion with the City of Los Angeles geologist, Grover Hollingsworth considered these faults to be pre-Holocene.

The data presented by Irvine Geotechnical and Grover Hollingsworth and Associates for localities S2-1 and S2-2, respectively, is consistent with the interpretation that no Holocene faults cross these sites north of the fault shown on the preliminary Alquist-Priolo Earthquake Fault Zone map.

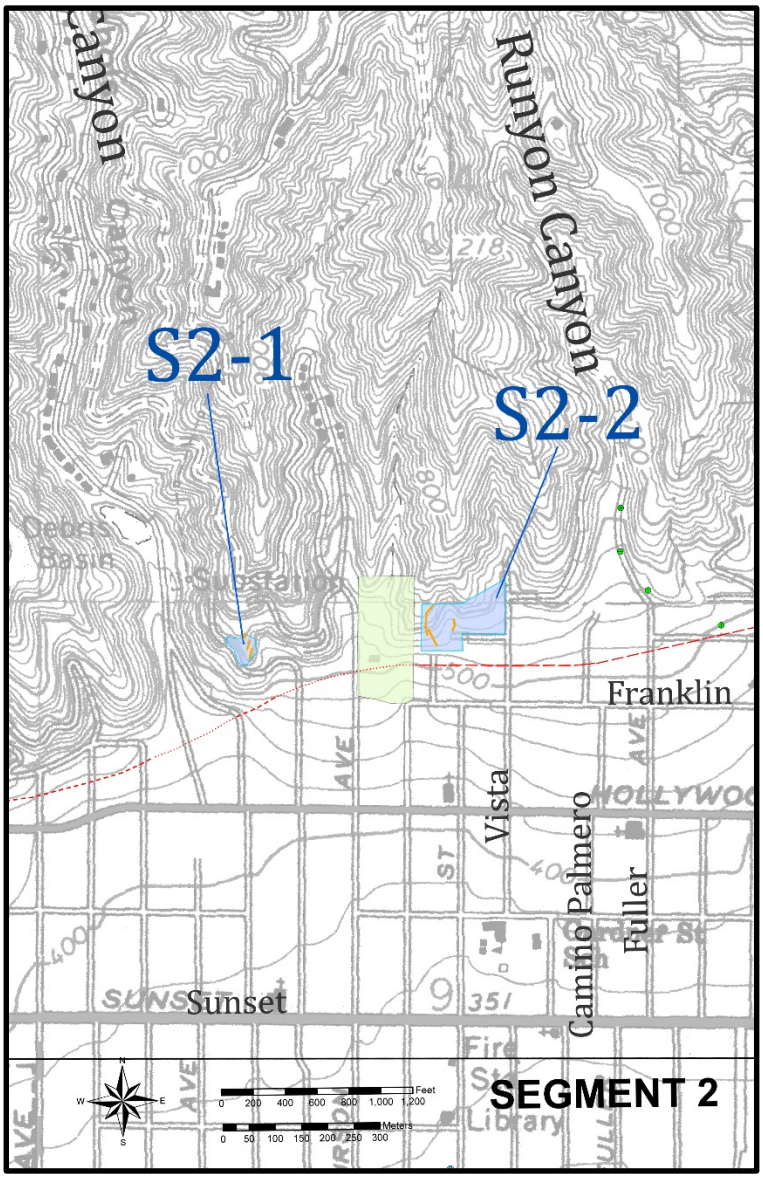

Figure 4 – Index map showing new localities S2-1 and S2-2. Trench locations indicated as orange line segments. Previous studies included in original FER shaded green.

Byer Geotechnical, Inc. (2014) prepared a fault rupture hazard investigation for a site south of Franklin Avenue near La Brea Avenue at locality S2-3 (Figure 5). They utilized continuous core borings and seismic refraction for their study. An age date from bulk AMS C14 samples collected near the base of the young alluvium was reported as 7.1 ka. Bulk samples just below the upper contact of the old alluvium yielded ages of 20.1 ka, and 22.0 ka. Their analysis indicated unbroken stratigraphy underlying the site and they concluded there is no direct evidence for the presence of active faulting at the site.

The data presented by Byer Geotechnical is consistent with the interpretation presented in the initial FER that the Hollywood Fault lies north of this site as shown on the preliminary Alquist-Priolo Earthquake Fault Zone map.

At locality S2-4 (Figure 5), (locality 12 in Hernandez and Treiman, 2014), CGS re-evaluated the fault strands at this site and compared them to the well-defined and well-constrained fault data immediately east of this location (Hernandez and Treiman, 2014), locality 13), as well as new data to the east at locality S2-5 (described below). There were several fault strands indicated in investigations at this site, and the re-assessment of the data led us to select a different strand as the dominant trace.

Based on our re-evaluation of these data, we suggest a modification of the fault trace slightly to the south to project through this preferred trace, connecting the well-located fault to the east with better defined scarps to the west.

CGS made observations of two fault trenches at locality S2-5, south of Franklin Avenue and N. Cherokee Avenue (Figure 5). Two separate visits were made to this site by J. Treiman (CGS). The southern trench, first visited on December 31, 2013, exposed southeast dipping Topanga Formation siltstone and sandstone, with interbedded or injected volcanics. No faults were observed in this trench at this time. A northern trench, visited on January 15, 2014, revealed a broad fault zone (about 20 to 30-feet wide) within the Topanga Formation. Bedrock to the north and south of the fault zone dipped moderately to the northeast. Within the fault zone, bedding and shears had an east-west strike with steeply north to vertical dips. Shearing increased toward the northern margin of the zone which had a sharp vertical shear and a soil-filled fissure. The north margin of this soil-filled fissure appeared planar, indicating the soil was faulted, rather than just falling into a shaking-related fracture. A visit to a freshly cleaned exposure at the initial southern trench, also on January 15, showed a shallowly north-dipping shear within the bedrock to the graded surface. Soils overlying the bedrock in the northern trench appeared to be very young. To date no report has been submitted by the owner to the City of Los Angeles or CGS.

Our observations confirm the location of the northern strand of the Hollywood fault as presented in the initial FER.

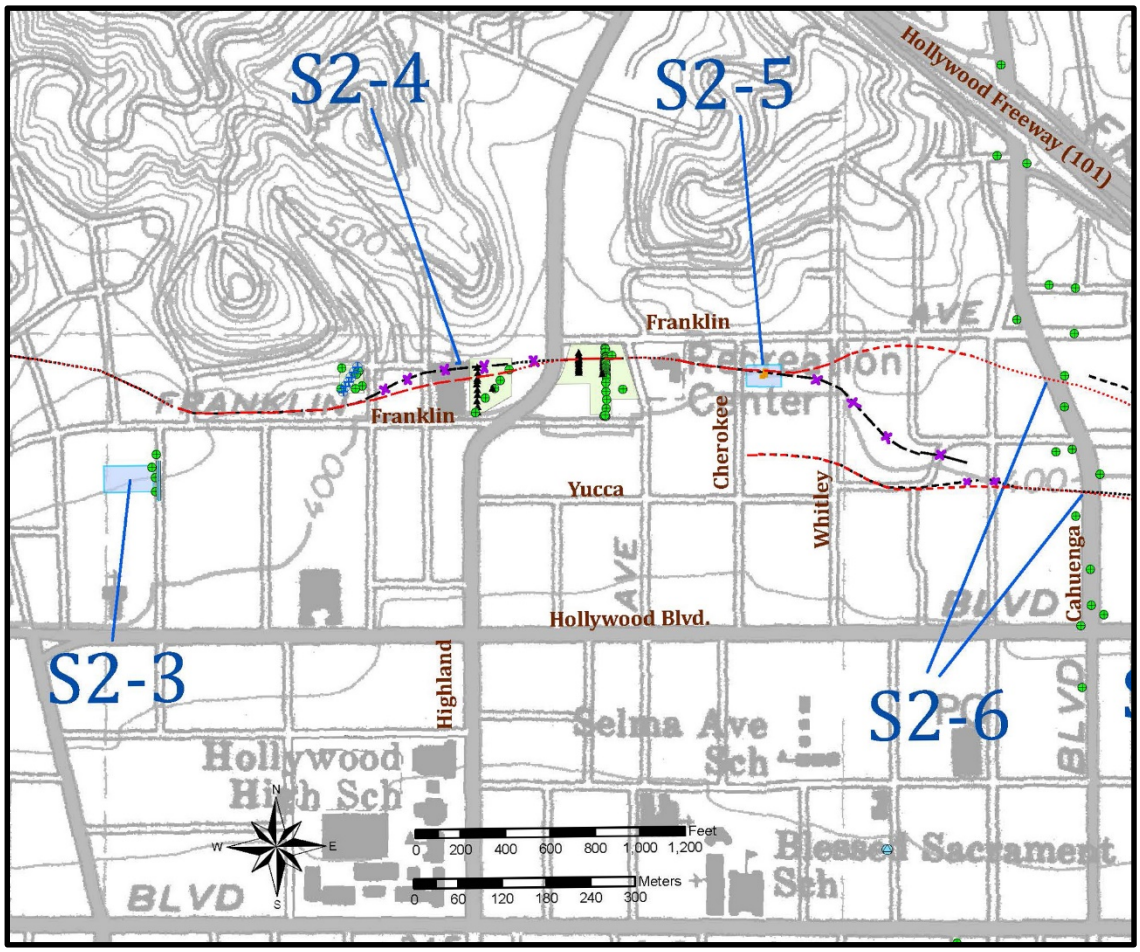

Figure 5 – Localities within Segment 2; S2-3 through S2-6. Red lines indicate mapped fault trace locations for the Official Zone Map. Black fault traces with purple hachures indicate where the fault trace was modified from the preliminary zoned trace. Green and black symbols are boring/CPT locations or transects. Orange lines are trench locations. Light blue shaded areas indicate reports received subsequent to the issuance of the FER.

<u>Converse Consultants, Earth Sciences Associates, Geo/Resource Consultants (1984) – locality S2-6 (Figures 5 & 7);</u> CGS acquired a geotechnical report prepared by Converse Consultants et al (1984) for the Metro Rail Red Line Project that was not available for the initial FER (Hernandez and Treiman, 2014). The initial FER relied on data from Converse Consultants et al, (1981, 1983) and Crook and Proctor (1992), and, although the borehole data from the 1984 report were described by Crook and Proctor (1992), the original borehole logs were not in the 1981 and 1983 reports that they reference.

The data presented by Converse Consultants et al (1984), specifically a cross section (Figure 6 herein) and boring logs, combined with observations of the fault at locality S2-5, support an eastward continuation of the northern fault trace , rather than the southeast trending orientation shown in the initial FER (that was based on Dolan et al., 1997)(Figure 7). We find the stratigraphy within the MTA boreholes reveals lateral discontinuities within the upper alluvial soils above the principal fault strands, in addition to offset bedrock as illustrated in the cross-section (Figure 6). The Converse Consultants data also supports the location of the southern trace of the fault where it crosses Cahuenga Boulevard as shown on the preliminary Alquist-Priolo Earthquake Fault Zone map. Additionally, the cross section shows a third fault that projects toward

the ground surface at Yucca Street, roughly between the northern and southern strands (Figure 6). Due to uncertainty as to how the various strands of this complex fault zone connect to the east and west we are only depicting the northern and southern fault traces on the Official Zone map.

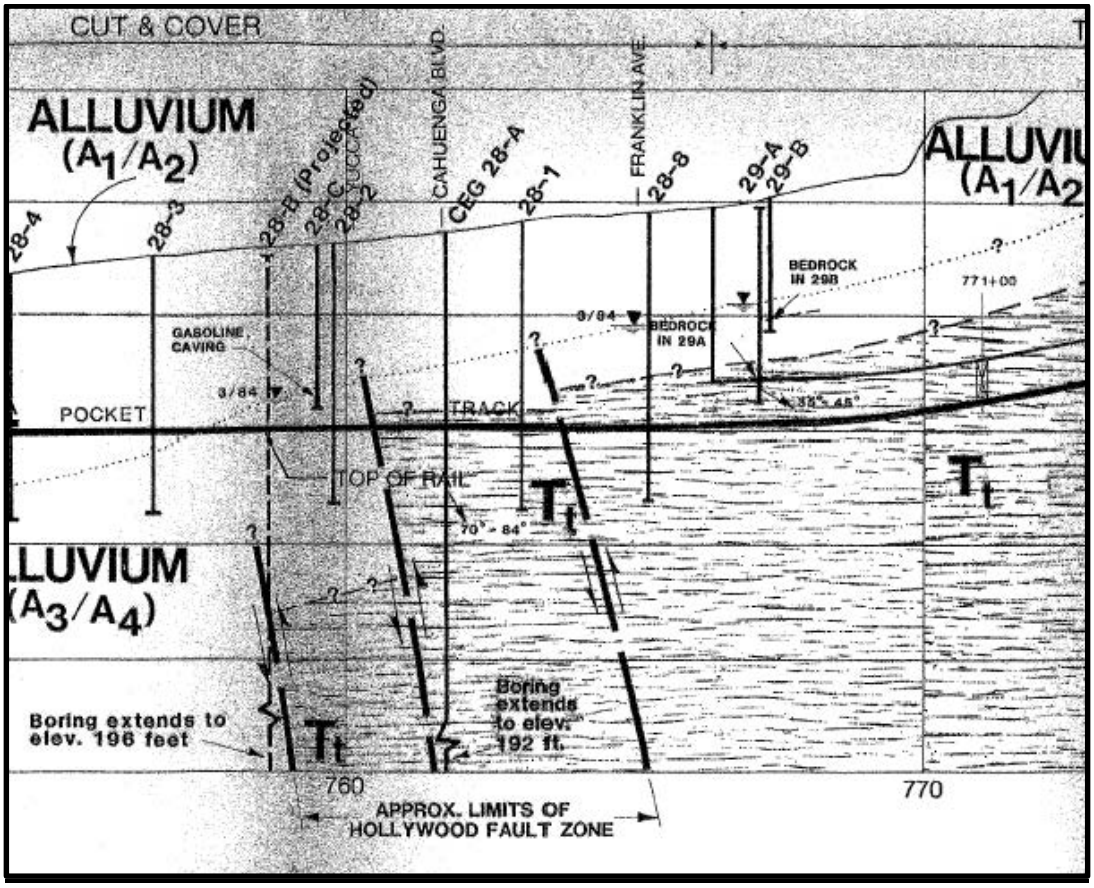

Figure 6 – Cross section from the Metro Red Line subway project. Portion of figure from Converse et al, 1984.

SEGMENT 2 (eastern portion)

A comment was submitted by Mr. David Waite of Cox Castle Nicholson, LLP on April 8, 2014 to the SMGB (Comment # 10, Table 1), with reference to localities S2-7 and S2-9 (Figure 7) and included a request to extend the public comment period. He referenced ongoing studies in the vicinity of Yucca Street and Argyle Avenue, and requested that this information be considered prior to issuance of the final map. Mr. Waite specifically mentions the Hollywood Millennium project, and a fault study for this project that was performed by Langan Engineering (2012). He also states that conclusions from this site-specific data were not relied upon by CGS in preparation of the fault map. Further, he concludes that the lack of evidence of a fault traversing the Millennium project does not represent a “sufficiently active, and well-defined fault.” They suggest that the map should “simply delineate supportable fault zones in which individual properties would undertake subsurface investigations, as it is fault zones which signal to localities and other constituencies that additional investigation is required.” Mr. Waite also states that additional subsurface data will be submitted to the City of Los Angeles and the State Geologist in the coming weeks and months so it could be considered in preparation of the final map.

CGS was invited to most of the sites referred to by Mr. Waite, where we performed limited review of trenches in the Yucca and Argyle area. Regarding our initial review of data and preparation of the initial FER, data from the Langan Engineering report for the Hollywood Millennium project was considered. However, our analysis of the subsurface correlation between borings and review of the C14 data arrived at different conclusions. Our review of the Langan (2012b) borings showed a major discontinuity between borings B-1 and B-5. This subsurface discontinuity is the boundary between gently south-dipping alluvial fan deposits to the north and fine-grained clayey deposits to the south. We interpret that this abrupt contrast in lithology indicates the presence of a fault. Regarding the statement that additional data will be submitted for this project, CGS has received no additional data for the site west of Vine Street at the time of this supplemental report, and only limited data for the site east of Vine Street.

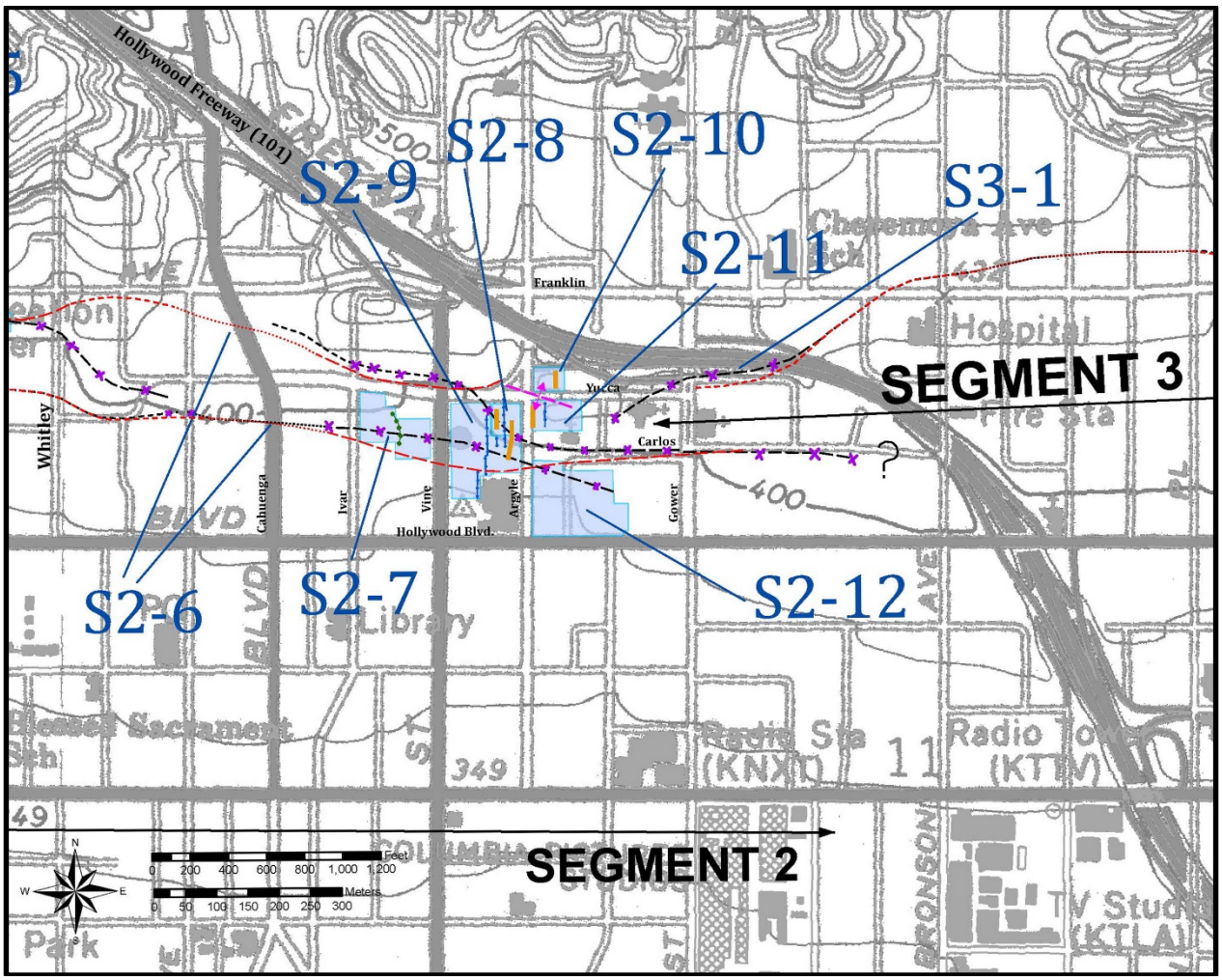

Figure 7 - Site index of the eastern portion of Segment 2, featuring localities S2-6 through S2-12. Areas shaded in blue include new reports submitted after the initial FER was prepared. Red fault traces indicate revised map traces. Black fault traces with purple X indicate modified areas from Preliminary EFZ map. Blue patterned line indicates boring/CPT transect, gold lines indicate fault trench locations. Magenta line at Site S2-10-11 is approximate anticline axis based on new reports by GDC (2014c)

Segment 2 - Localities S2-8 through S2-11

Fault studies for localities S2-8 through S2-11 were conducted by Group Delta Consultants, Inc. (GDC) over the timespan between about February and July, 2014. CGS was provided the opportunity to perform periodic trench review of some of the trenches for these sites, however some limitations were implemented, either based on site conditions, property owners restrictions, or other reasons. A table summarizing CGS site visits in this area is provided in Appendix B of this supplemental report.

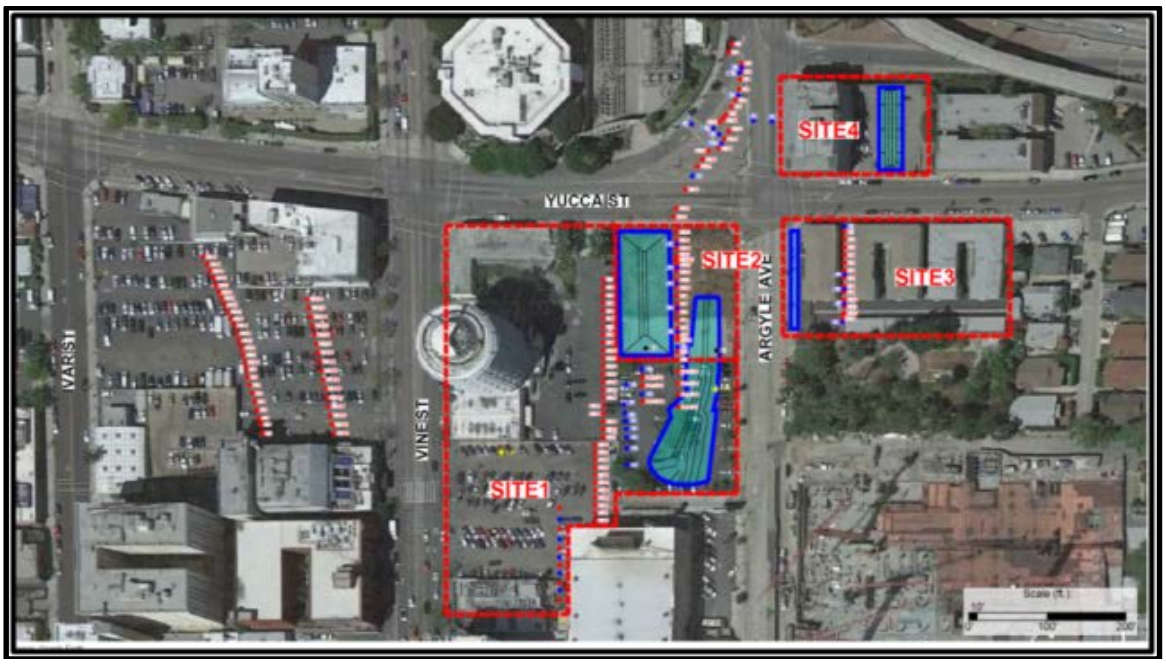

Figure 8 – Group Delta Consultants, Inc. numbered site investigations in the Yucca/Argyle area of Hollywood. Figure modified from Group Delta's submittal to the State Mining and Geology Board on August 14, 2014. Only data for Sites 2 and 3, and the CPT line for Site 1 were submitted to CGS in time for consideration in this Supplemental FER.

A comment was submitted by Mr. Michael Reader of Group Delta Consultants, Inc. (GDC) on March 13, 2014 to the SMGB for locality S2-8 (GDC Site 2, Figure 8). Mr. Reader stated that although there are mapped locations where the Hollywood Fault is somewhat well-defined, in the area between Cahuenga Boulevard and Gower Street the Hollywood Fault is concealed by alluvial fans, and that no data in this area have located the active trace. He also reported that the geologic community agrees the active trace of the Hollywood Fault lies "somewhere" in this area. However, he questioned the delineation of the zone for this area, with such sparse available data.

The initial FER (Hernandez and Treiman, 2014) provides strong evidence that the fault is well-defined to the west of the Yucca Street/Argyle Avenue area. Reasonable projection of the Hollywood Fault in this area was inferred based on supportive evidence to the west, geomorphic interpretation, and limited subsurface data. There is also good evidence the fault continues to the east, suggesting that a continuous zone of faulting extends across the map. The purpose of the map is to require investigations, like those Mr. Reader refers to in the Yucca Street/Argyle Avenue area, to ensure fault rupture is not a hazard to human lives and habitable structures.

A fault study, conducted by Group Delta Consultants, Inc. (2014a) was submitted to the SMGB on May 6, 2014 for locality S2-8 (GDC Site 2, Figure 8). This study included core boring and CPT transects and an approximate 100-foot long, 30 foot deep trench on the western portion of the site. GDC reported that they found no evidence for faulting in the Holocene units on this site. The study also reported age estimates of weathered soil horizons at two locations within the trench, prepared by Dr. Roy Shlemon, and included test results from two charcoal samples submitted for C14 dating.

GDC reported the site is underlain by fluvial channel deposits, locally named the Argyle Channel, which they estimate to be Holocene. Underlying the Argyle Channel deposits, they report a clayey sand layer. The contact between the lower clayey sand and the overlying Argyle Channel sands is reported to be an erosional unconformity. The lower clayey sand is reported to be at least 12 to 15 ka, based on relative soil pedogenic development exposed in the trench. Age estimates by GDC are based on soil development described by Dr. Roy Shlemon, in Appendix B of their report, and correlation of the unconformity with ice age sea-level low stand at during marine isotope stage 2. Radiocarbon dates reported for the Argyle Channel deposits were about ~4.3 ka, and ~41 ka at about 14 feet, and 18 feet below the ground surface (bgs), respectively. GDC prefers the soil-stratigraphic and paleo-environmental age estimates for the Argyle Channel deposits and does not use the radiocarbon dates.

A second Fault Activity Report was submitted by GDC for locality S2-8, dated September 3, 2014 (Group Delta, 2014b). This investigation consisted of additional CPT and core borings from adjacent sites in the vicinity, and an additional trench located on the eastern portion of the site that also extended south into GDC Site 1 (locality S2-9). During this second investigation, GDC reported a bedding plane fault underlies the site, where they concluded this fault is overlain by a buried paleosol “indicative of about 30 ka of weathering.” This trench was excavated in response to comments by the City of Los Angeles noting that faulted Pleistocene sediments were found directly across the street to the east (GDC, Site 3; locality S2-11). Within this eastern trench at locality S2-8, Argyle Channel deposits were exposed, underlain by mudflow deposits (previously referred to by GDC as the clayey sand or “basal clay” unit). Underlying the mudflow deposits they reported well-consolidated older alluvial debris flow deposits that are dipping gently to steeply to the south. C14 dates near the base of the Argyle Channel deposits were reported at ~4.1 to 4.3 ka. (Group Delta, 2014a, 2014b). The soil ages within the trench were derived from soil profile descriptions from R. Shlemon. GDC concluded that folding and related slip observed in their trench occurred prior to deposition of the mudflows, capped by a remnant buried paleosol of about 30 ka, and are overlain by the unbroken, estimated ~12 ka Argyle Channel deposits.

The data presented in the GDC report appear to be consistent with the interpretation that the Argyle Channel deposits are of Holocene age. However, multiple C14 samples GDC reported within their trenches near the base of the Argyle Channel, are only ~4.3 ka and thus the channel deposits do not represent the complete Holocene record. We consider the Argyle Channel deposits to be approximately 6 ka, based on C14 data throughout the two trenches, and related soil development. The interpretation that the underlying clayey deposit is pre-Holocene appears to be consistent with the reported data. Detailed analysis of the soil profile development was prepared by G. Seitz, of CGS, and is included in Appendix A of this supplement. This analysis includes further comments regarding the reported age classification of the Argyle Channel deposits, and underlying clayey sand unit.

The data presented in the GDC report regarding faulting of these deposits is also open to alternate interpretations. The trench log and correlation by GDC show that Argyle Channel deposits are unfaulted across much of the site. CGS performed a field review of the west trench on two occasions, the first was not extensive enough to verify all of the consultant's conclusions due to safety concerns, however a subsequent visit afforded the opportunity to view the clayey sand deposits and relative soil development at the base of the trench. Our review of the CPT and core boring data for GDC Site 2 finds the Argyle Channel sand unit appears to be continuously correlated between borings and CPT tests, however the underlying clayey sand unit is shown to be discontinuous across portions of the site. Our review further notes the cross sections illustrated by GDC favor the CPT correlations, where core boring data in some areas does not directly support their stratigraphic interpretation.

CGS viewed several stages of the eastern trench investigation that was placed to potentially expose faulting that may project onto GDC Sites 1 and 2 from GDC Site 3 (to the east). Faulting was observed in this east trench at approximately 80 feet from the northern trench end, placing this fault at about the same location and orientation as the trace mapped by CGS in the Preliminary EFZ map. Further observations of this fault during June and July, 2014, revealed that age of faulting appeared to be constrained by an overlying, unfaulted mudflow deposit and paleosol, estimated to be about 30 ka by R. Shlemon (GDC, 2014c). The soil structure within the soil that overlies the fault does not exhibit rotation of pedogenic faces and appears undisturbed by movement along this particular fault trace. Two older faults, below and cut by this fault, were also observed in the tilted fan deposits but were not logged by GDC.

Based on this new trench data, as well as other data, we have relocated the northern fault strand to project along Yucca Street toward the north. The southern fault strand is also modified in this area based on data from locality S2-9 (GDC Site 1), described below.

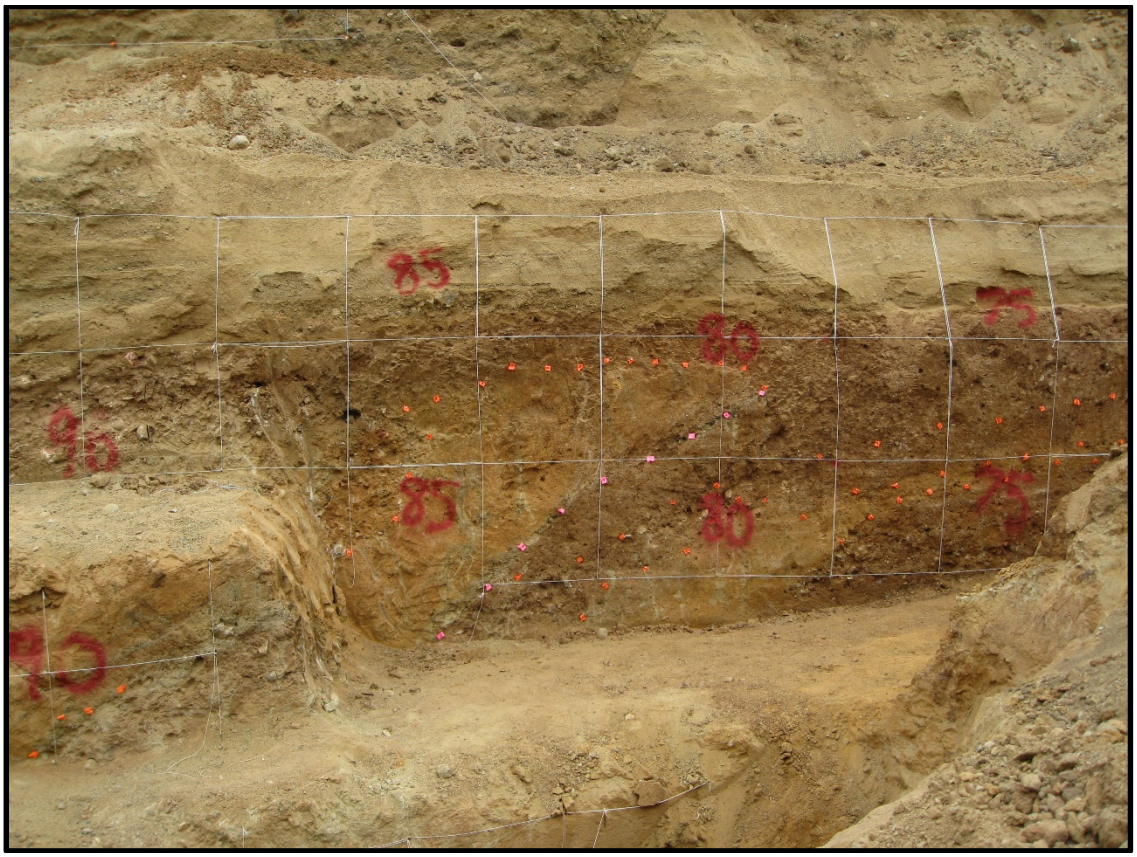

Figure 9 - View looking west at south dipping pre-Holocene bedding plane fault with a possible reverse sense of displacement in GDC's east trench. This trench was excavated across the southeastern portion of Site 2, and extends into Site 1; fault noted by pink flagging in the center of the photo. The upward termination of this fault, located right of Station 80 (about station 77), is within a fissure fill, which upon close inspection, is overlain by a mudflow deposit and soil, reported to be about 30 ka. In this photo, the Pleistocene age older alluvium (debris flow deposits) are overlain by a thin mudflow deposit, overlain by sands of the Argyle Channel.

Group Delta Consultants, Inc., (2014d) prepared a limited data report from a Fault Activity Investigation for locality S2-9 (GDC Site 1, Figure 8). Their investigation included core borings, a CPT transect and an approximate 240 foot-long, 30 foot-deep trench on the eastern portion of the site (a southward extension of the trench to the north on site 2). The GDC letter report includes a summary of technical findings that includes a summary of the interpretations for other sites surrounding Site 1. The only data provided in the report are CPT logs and two interpreted CPT profiles. Trench logs, borehole logs and age dating results were not provided. GDC reported an unbroken late-Pleistocene mudflow deposit and overlying Holocene Argyle Channel deposits within Site 1.

CGS was invited to the site for periodic trench review between June 30, 2014 and July 11, 2014, where we observed unbroken Argyle Channel deposits overlying an older unbroken unit that was tentatively correlated by GDC staff to mudflow deposits observed to the north. In the northern portion of Site 1 near the boundary with Site 2, the late-Pleistocene mudflow unit appears to be draped over the underlying folded debris flow units, and what may be the same unit appears near-horizontal as it extends to the southern end of the trench (Figure 10a).

We received no logs of this part of the trench to clarify these relationships. Figures 10a, 10b show the stratigraphy in the south end of the trench. Our review of the CPT data for this site, and some earlier core borings (from GDC Site2) indicates a discontinuous south-dipping Quaternary stratigraphic section, with a prominent stratigraphic break toward the southern end of the property indicative of a fault. The orientation of this break appears to be north-dipping, projects upward toward the ground surface near the southern property boundary (south of the trench exposure), is in alignment with the fault scarp located north of Carlos Avenue immediately to the east, and is in alignment with an inferred fault trace from the Langan data west of Vine Street (locality S2-7) to the west. On the basis of these observations, the southern trace of the Hollywood Fault has been moved to the southern boundary of locality S2-9, just south of the trench exposure.

Figure 10a – View looking southeast at the southern trench portion of the long eastern trench that extended from GDC Site 2 into Site 1. Trench reveals unbroken Argyle Channel deposits extend in depth possibly to about the upper string line at the lowest bench, just left of the ladder. A bioturbated layer and thin gravel bed of uncertain age below the bottom string line below the lowest bench also appears unbroken (see **Figure10b** below).

Figure 10b – View looking at east wall at about station 235, of east trench, GDC Site 1. Close-up of poorly sorted fine-grained deposits that underlie Argyle Channel deposits. Contact with a darker, bioturbated layer is near the base of the trench, just below the blade on the scraper tool. Where exposed, unit appears continuous and unbroken through the southern end of trench bottom. Total length of trench at base is approximately 240 feet extending across GDC Site 2 toward the southern boundary of Site 1. Bottom of southern trench end is approximately 45 feet north of the southern property line.

At locality S2-10 (GDC Site 4) a single, brief site visit was conducted by J. Hernandez on July 11, 2014, to a trench located underneath an existing parking structure. This trench revealed bedding that was relatively flat at the southern end of the trench, to gently north-dipping toward the northern end, with bedding dip increasing toward the north. This brief site visit included observations of several steep, south-dipping faults with normal south-side down sense of displacement, oriented approximately east-west. The faults projected to the ground surface underlying the parking structure and footings. Our brief observation did not find Holocene deposits within the trench. Unfortunately, the conditions of access to this trench included no photographs and no measurements of any kind, and only the above general observations can be reported here. A subsequent visit was offered by GDC for August 21, 2014 and was later cancelled. No report for this site was submitted to CGS within the September 15 deadline, and therefore newer data could not be included in this supplemental FER. Downhole observations of one bucket auger boring located in the street west of GDC Site 4 were made by J. Hernandez, which revealed depth to contact of the Argyle Channel deposits, and underlying clayey sand mudflow deposits at about 20.5 feet bgs. Due to groundwater levels rapidly rising within the southern boring, down hole observation of this second boring by CGS was prevented.

CGS also reviewed logs of test borings from Caltrans for the bridge abutments in the area of Argyle Avenue, north of Yucca Street. These boring logs described brecciated bedrock at depth, which may be related to the northern fault trace in this vicinity.

Our observations of faulted older alluvial units and north-dipping bedding within the trench is consistent with a west-trending anticlinal structure along Yucca Avenue. We have modified the preliminary zone boundary to include this zone of deformation and faulting in the Official Alquist-Priolo Earthquake Fault Zone map.

At locality S2-11, (GDC Site 3, Figure 8), Group Delta (2014c) reported the site is underlain by fill materials and older alluvial debris flows, which in turn are underlain by Modelo Formation. Their site investigation included both CPT and core borings, and an approximate 8-foot deep trench on the west side of the site. GDC reported the older alluvial unit consists of Pleistocene debris flows, and state that this unit is faulted. They associated this fault with a localized west-northwest oriented anticline, which extends north to GDC Site 4, as shown in their cross-section (Figure 11). They interpret these features to be due to regional transpression and not to seismogenic faults. They report the age of the faulting at this site is older than 35 ka based on unbroken mudflow deposits found to the west at Site 2.

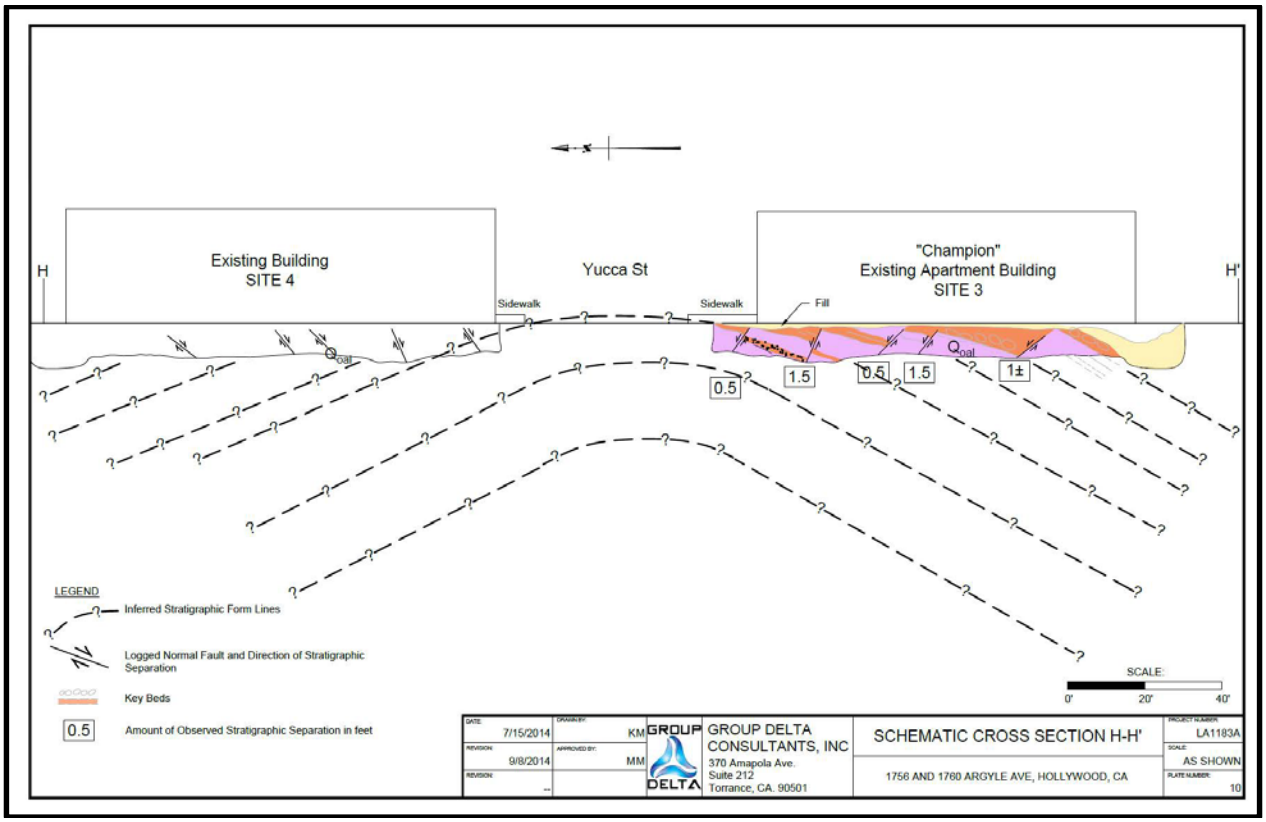

Figure 11 – Cross-section from GDC Site 3 showing anticlinal folding of Pleistocene debris flow deposits, inferred stratigraphic form lines and faults that offset this unit. Numbered annotation at each fault reflects GDC's observed stratigraphic separation at each location. Figure from GDC, 2014c.

The data presented in the GDC report is consistent with the interpretation that the deposits are of Pleistocene age although it is unclear why these "debris flow" deposits are differentiated from the similarly comprised and deformed older alluvial fan unit exposed and described at site 2.

Interpretation that the faults are local bending moment faults is not consistent with CGS field observations within the trench. CGS noted a significant lack of correlation across the southernmost fault, and that thickness of units changed across most of the faults, which indicates a component of lateral displacement (Figure 12). The southernmost fault appeared to be a prominent fault, as correlative units across the fault were not found, suggesting this fault trace may have seen the most displacement. No evidence for, or against, Holocene faulting was reported on this site because Holocene deposits, if present, were likely removed during site development.

Figure 12 – At GDC Site 3, locality S2-11, view looking easterly at faulted Pleistocene alluvial fan deposits, yellow flag indicates fault to right of shoring near the center of the photo. Gray zone at the top of the photo is concrete. Bedding gently dipping to the south (right), with steepness increasing to the south. Of the 7 faults CGS observed, most faults indicated a difference in unit thickness across fault. The southernmost fault did not have any correlative units across the fault.

A comment was submitted by Lettis Consultants International, Inc. (LCI), accompanied by a transmittal letter by Elkins Kalt Weintraub Reuban Gartside, LLP on April 8, 2014 to the SMGB to specifically address the BLVD 6200 property located at 6201 Hollywood Boulevard in Hollywood (locality S2-12, Figure 7). In their report, they present data and analysis of the site and vicinity, with additional focus on the southern, discontinuous trace of the Hollywood Fault that is mapped on the Preliminary EFZ map to underlie the site. LCI presented detailed topographic profile analyses consisting of 3 sets of data including: review of historical 6-minute topographic maps, high-resolution lidar imagery, and high resolution ground survey topographic profiles along 8 closely-spaced, north-south oriented streets. These profiles were located within the streets adjacent to the BLVD 6200 site and along other nearby profile lines. They identified breaks in slope within the profiles of these transects, and included locations of scarps previously mapped by Dolan et al. (1997), the projection of fault traces mapped by CGS in FER 253, and the BLVD 6200 project boundary.

LCI stated that in addition to the prominent break in slope located immediately north of their site, a subtle break in slope is expressed across the southern portion of the site. They reported this southern slope break is located south of the southern discontinuous fault trace mapped by CGS. They suggest that subtle breaks in slope can be related to several factors: change in slope direction on the ground surface, or thickness and directional changes within the alluvial fan system. Their analysis noted that the subtle slope break is coincident with an east-west trending apparent scarp mapped by Hill et al. (1979), and a possible fault scarp mapped by Weber et al. (1980). In their review of the 1926 topographic maps, they indicated that Argyle Avenue did not yet exist at this location, and that possibly the subtle break in slope observed in the street may have been created during subsequent construction of Argyle. Alternatively, they concluded that this subtle break in slope reflected in the composite topographic profiles (Figure 13), is most likely related to scarp-derived colluvium from the steep break in slope to the north.

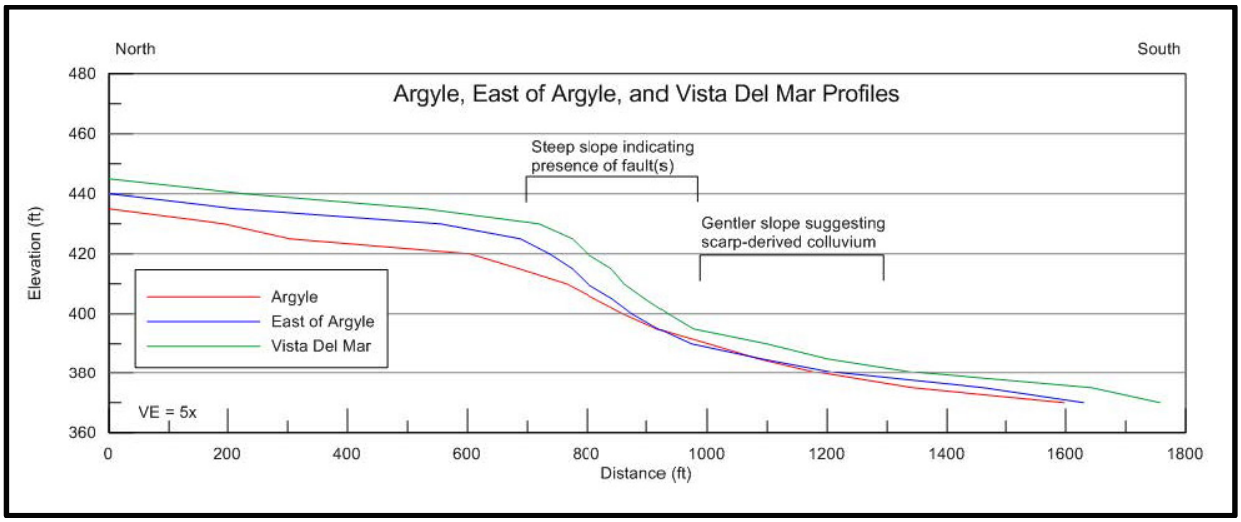

Figure 13 – Topographic profiles constructed from 1926 historical topographic maps, located within and adjacent to the BLVD 6200 project. These profiles prepared by LCI, indicate steep portions of scarps suggest they were created by fault movement, whereas gentle slopes suggest formation by down-slope movement of scarp-derived colluvium. Modified from LCI, 2014.

Summarizing earlier work, LCI reported that construction observations made by Geotechnologies, Inc. (2013) during the nearly 50-foot deep excavation for the BLVD 6200 project revealed no faulting or folding of units was observed during cleaning and installation of lagging of the sidewalls, prior to building construction. Regarding a steep groundwater difference underlying the northern portion of the site, LCI suggests that more detailed, closely spaced data is required to determine if the groundwater step is produced by a fault, or other barrier in the subsurface.

LCI also provided an alternative explanation of the incised drainage feature (CGS FER 253, Figure 12, locality S2h) that terminated at Carlos Avenue. They suggest that this feature was at a similar location to a mapped public ditch, as indicated on a Sanborn street plan, dated 1919. Based on review of topographic maps and land use, they infer this feature was likely a man-made or man-modified feature. In their conclusions, LCI reported the southern CGS-mapped fault strand is not “well-defined” and without benefit of detailed subsurface investigation, minor secondary faults cannot be conclusively demonstrated at sites near the main scarp; the small drainage incision CGS associated with faulting is likely man-made; and the main trace of the Hollywood Fault is located immediately north of the BLVD 6200 site.

Based on an analysis of available boring log data from adjacent studies in the area, LCI interpreted an alternative location for both the northern trace and the southern trace that they suggest would best fit the previous mapping by Dolan et al. (1997).

The data presented in the LCI report was particularly helpful in CGS review of topographic breaks in slope. Fault traces mapped by CGS in this area were based on geomorphic interpretation using similar data as used by LCI, as well as fault traces from Dolan et al. (1997), Hill et al. (1979), and Weber et al. (1980). In addition, the southern discontinuous fault trace was mapped using original subsurface data from Geotechnologies, Inc. (2006) that included logs of borings and the site topographic base map. CGS review of the high resolution street survey data submitted by LCI in their report, and detailed observations included in the Geotechnologies (2013) report, finds justification to modify our interpretation of the location of the principal southern fault trace.

Further, CGS review of the data along Argyle Street, at locality S2-11 (GDC Site 3), finds a section of south-dipping Quaternary fan deposits which presumably extend to the 35'-40' high slope immediately north of Carlos Avenue. This east-west trending slope has been interpreted to be a fault scarp (Dolan et al, 1997; Hernandez & Treiman, 2014; Lettis Consultants International, 2014). GDC offered the unlikely interpretation that this slope is erosional. South of Carlos Avenue, a 50-foot deep excavation for the BLVD 6200 project reportedly encountered only flat-lying sedimentary deposits (Reinard Knur, personal communication to J.Treiman) with no indication of a more indurated and tilted Pleistocene section. A letter report from Geotechnologies, Inc. dated August 16, 2013 described interlayered sands with no mention of either bedrock or deformation. The contrasting sections north and south of Carlos Avenue support a fault interpretation at this location.

Segment 3

As described above, LCI (2014) prepared several topographic profiles along north trending streets in the vicinity Yucca Street and Argyle Avenue, which included portions of both Segments 2 and 3. Their analysis included identification of breaks in slope in the area of locality S3-1 (Figure 14). LCI inferred these features were attributed to either: tectonic fault scarps (steep breaks), or alluvial fan or colluvial deposits eroding off the fault scarps (subtle breaks).

The data presented in the LCI report is helpful for reviewing the magnitude of breaks in slope as they trend from west to east across this portion of Hollywood. As a result, the western portion of the fault trace along Segment 3 appeared to be mapped a few feet north of the base of a subtle break slope, as indicated in the LCI profiles. We have modified the fault trace closer to the base of the slope break as shown in Figure 14. This modification has no effect on the EFZ boundary at this location.

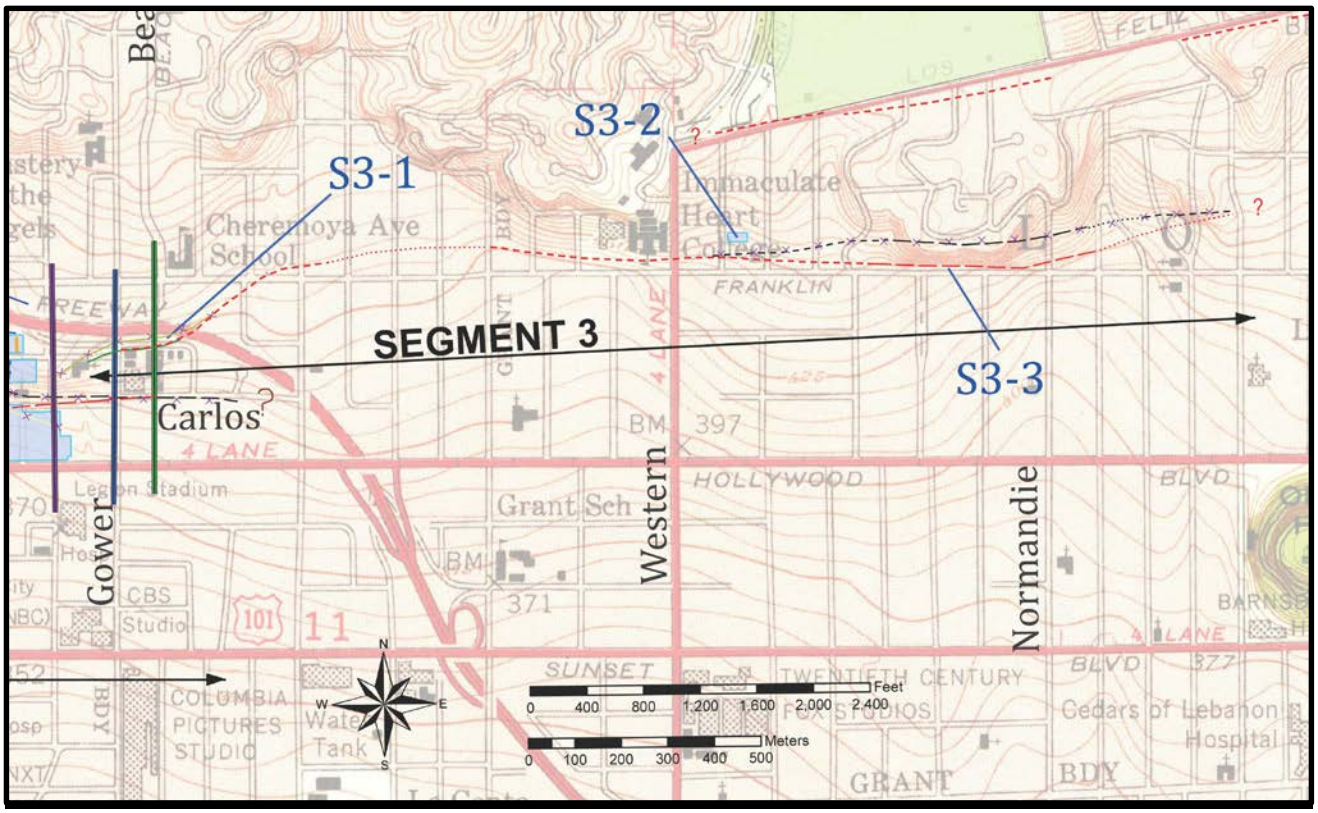

Figure 14 – Localities within Segment 3. North-south lines near Gower are elevation survey transect locations by LCI. At locality S3-1, the red fault trace indicates the revised fault trace location based on breaks in slope identified within the LCI surveys. Purple cross hatch on the black fault trace indicates location of fault trace as reported in the FER. Locality S3-2 is the Bay City Geology study site. Locality S3-3 indicates the modified fault trace (in red) based on revised interpretation of the scarp utilizing the 1926 topographic base map as described in the text.

Bay City Geology, Inc. (2014) performed an investigation for a site located within the Preliminary EFZ at locality S3-2 (Figure 14). Three large diameter borings were drilled, revealing a thin layer of older alluvium, underlain by weathered Topanga Formation siltstone and sandstone, grading to less weathered bedrock at about 21 feet bgs. Bedding planes in Topanga measured in the borings had northwest strikes, with dips to the southwest. Bay City stated that similar geologic units were encountered in all of the borings at similar depths, where they indicated this was positive evidence for continuous, unfaulted geologic units across the site. From these data, they inferred the Hollywood fault is located south of the site.

The data presented in the Bay City Geology report is consistent with the interpretation presented in the initial FER that the Hollywood Fault lies south of this site as shown on the preliminary Alquist-Priolo Earthquake Fault Zone map.

At locality S3-3 (Figure 14), CGS revised the location of the Hollywood Fault trace along Franklin Avenue east of Western, based on a review of the 1926 topographic map covering this area. Our initial interpretation in this area utilized a later version of the topographic map, where topographic details were more subtle. Our reinterpretation of the fault trace follows closely with the trace mapped by Dolan et al, 1997.

As a result of this minor adjustment, the EFZ boundary has shifted slightly to the south.

Segment 4

No new data or comments were received for Segment 4.

Segment 5

David L. Perry, comment letter dated April 18, 2014: Mr. Perry submitted a comment to the SMGB on April 18, 2014 regarding the location of the Hollywood Fault and analysis of the supporting data from the Northeast Interceptor Sewer (NEIS2A) project area (locality S5-1a) as shown on Figure 15. In this letter, Mr. Perry reports the cross-section utilized in the FER (from the Los Angeles Department of Public Works, 2013) is vertically exaggerated, and includes borings that were projected up to 63 feet horizontally into the section. In the AMEC (2013) report, he states there is a cross-section drawn at a 1:1 scale, and acknowledges subsequent boring data performed by the City of Los Angeles Department of Public Works (City of Los Angeles, 2013) was included in the cross section utilized by CGS for the FER. Mr. Perry's interpretation of the data, and his extensive experience in this area suggests the "thickening of young alluvial deposits within the fault zone" as reported by CGS, is likely attributed to paleochannels from the Los Angeles River system, and that the projection of the data into the cross-section should include consideration of geomorphology and paleochannel geometry.

We reviewed Mr. Perry's comments, and appreciate the insight he provides in this area, and particularly with his experience on the NEIS project. Regarding projection of data into the NEIS profile, we acknowledge the thickness variation of recent alluvium in the vicinity of subsurface faulting may be due to erosion processes, and paleochannel morphology along the ancestral Los Angeles River system.

Patrick Schmidt, and Fred Burnett, (2014): Mr. Schmidt and Mr. Burnett of the City of Los Angeles Bureau of Engineering (BOE) provided CGS a technical paper they prepared in February, 2014 that was submitted to the Underground Construction Association's North American Tunneling Conference (NAT). In this paper, they discussed some of the exploratory methods implemented during the Northeast Interceptor Sewer project (NEIS), including: borings with down-hole geophysics, packer and pressuremeter testing, CPT testing, Remi surveys and surface geophysics lines. They reported some of the difficult conditions they anticipate encountering during tunneling along the fault zone, including: squeezing and running ground conditions, high methane gas concentrations, and up to 5 bars of water pressure. They reported the main Hollywood Fault was located between exploratory borings M08-B4 and M08-B5, where interpolation of the geophysical surface survey data identified two north dipping fault planes with three south-dipping secondary faults in the hanging wall that merge at depth.

This technical paper describes conditions the City of Los Angeles BOE will encounter during tunnel excavation operations. No additional details regarding active faulting either outside or within the tunnel alignment were noted. However, their description of difficult tunneling conditions keys into the general width and local structure of the fault zone along the west bank of the Los Angeles River Valley.

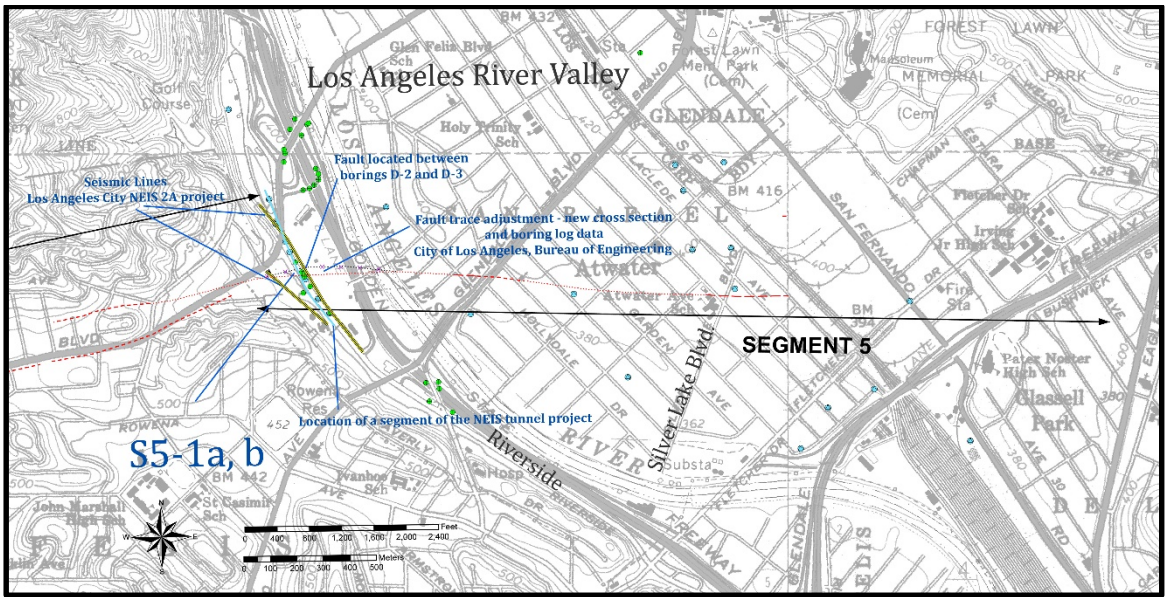

Figure 15 - Localities S5-1a, b show where additional information was received from the City of Los Angeles, Bureau of Engineering Department for the NEIS 2A project. Figure shows adjusted location of the Hollywood Fault trace, based on these new boring logs, cross section, and consideration of comments received from D. Perry. Red lines are final fault trace, purple cross hatch on black fault trace indicates location of fault trace as reported in the FER. Light blue line represents a segment of the NEIS tunnel alignment. Yellow lines indicate seismic profile transects. Green and blue symbols along the alignment represent core borings and monitoring wells, respectively.

City of Los Angeles (2013) conducted an additional fault study that included 3 borings that were drilled during April - May 2013 for the NEIS 2A sewer project. These borings were drilled to further define the limits of the deep older alluvium associated with the active trace of the Hollywood Fault at locality S5-1b. The borings also helped to define the artesian groundwater pressures, depth of bedrock, and methane concentrations they will likely encounter during tunneling operations.

City of Los Angeles (2014) prepared an updated cross-section with location map showing the investigation sites along the NEIS tunnel alignment. This new cross-section included the locations of the 3 borings presented in the 2013 report at locality S5-1b (Figure 17).

Our review of the updated cross section and boring logs received from the City of Los Angeles (locality S5-1b), finds that the original projected surface trace of the fault should be shifted to the south approximately 90 feet. We have revised the location of the fault trace based on this new cross section and supporting data. A corresponding revision of the zone boundary has been made.

DISCUSSION

SEGMENT 1

Studies were received for one site along this segment (Golder Associates, 2014a, b) but they revealed no new data that would modify our conclusions or recommendations for zoning in this area.

SEGMENT 2

Several modifications to faults within segment 2 shown on the Preliminary EFZ map are appropriate in response to detailed fault investigations and additional interpretation. The most noticeable change is in the fault pattern. Rather than the series of en-echelon fault strands initially depicted, the official Alquist-Priolo Earthquake Fault Zone Map should depict a distinct northern and southern trace that better fit the data. The basis for these modifications are summarized below.

Northern strand of the Hollywood Fault:

Re-assessment of the preferred fault trace at site S2-4 supports the fault projection on a straighter line between well-defined faults to the east and geomorphic features to the west. Trench observations by CGS at site S2-5 revealed a soil-filled fault zone within the Topanga Formation bedrock. Faulting was oriented generally east-west, and was steeply north-dipping, suggesting the northern fault strand in this location continues along an eastward trend. The northern strand may continue across a small ridge that extends south from the general mountain front, probably marking the break between higher ground to the north and a flattened portion of that ridge at Franklin Avenue.

MTA cross sections show faulting south of Franklin Avenue near Cahuenga Boulevard that is interpreted to be related to this strand, from there it is believed to continue along the southern margin of the truncated ridgelines to the east (at Vine Street). The northern strand continues east of Vine Street to sites S2-10 and S2-11 at the corner of Yucca and Argyle streets. There, small faults and a prominent fold in Pleistocene alluvium may be interpreted as resulting from lateral faulting and near-fault folding, though this is not the preferred interpretation of the consultants who studied this site.

Yucca Street Anticline:

GDC suggests this fold is a response to “regional transpression and not related to local faulting.” We tend to believe that the fold may be directly related to deformation associated with the Hollywood Fault. Abundant shearing in the bedrock observed by GDC and others, north of Yucca, suggests the presence of the northern strand of the Hollywood Fault Zone in this area. We see several fault-related possibilities for this fold. The fold may have been generated in much the same manner suggested by Figure C in the report for GDC Site 3 (GDC, 2014c). The pattern of folding and faulting is in general accord with the geometric relationships described by Harding (1974) for wrench fault situations.

Another possibility is that we may be seeing, within GDC Sites 3 and 4, the crest of a broad flower structure along part of the Hollywood Fault Zone, bounded here by the north and south strands. The magnitude of offset along some of the faults, including an unknown lateral component of slip, suggests that these are more than just passive normal faults as suggested by GDC.

A third alternative might be that the fold was responding as a hanging wall structure above a north-dipping reverse-oblique southern strand. GDC claims that their data for GDC Site 1 preclude the presence of an active fault along the southern margin of the fold, however, having looked carefully at the data submitted we do not find this certainty and in fact find several anomalies in the CPT data that may be explained by faulting.

Southern Strand of the Hollywood Fault:

The southern strand is most strongly defined at the surface by the truncated ridge between Whitley and Wilcox (west of Cahuenga) and a similarly truncated ridge north of Carlos Avenue (east of Argyle). The location and significance of the southern strand is confirmed by the Metro borings and cross section along Cahuenga (Figure 7) and the subsurface data submitted previously by Langan (2012b; locality S2-7). A revised location of the fault at the latter location in the initial FER, due to re-evaluation of the fault dip from recent studies, is corrected in this report. Although complete continuity of the southern fault strand is not confirmed through this area, it is suggested by anomalies in a CPT transect to the east of Vine (GDC Site 1). The most prominent horizon in this transect, the base of the Argyle Channel, has several anomalous south-side-up steps that may be related to faulting, and several less-continuous units lower in the section appear to support corresponding disruptions. Some of the latter may correspond to the faults observed near the southern GDC Site 2 property line in the eastern trench for that site. However, the main zones of disruption, extending highest in the section, may lie between CPTs C-21 to C-22 and C-26 to C-29. The eastern trench at GDC Site 2 (and extending south into GDC Site 1) did not extend far enough south to fully explore these possible faults and their potential connection to the scarp at Carlos Avenue. Data from a boring log transect on GDC Site 1, that might cross the fault, have not been released.

East of Argyle Avenue the southern strand continues along the base of the slope along Carlos Avenue. South-dipping older alluvium underlies the ground to the north, as exposed in studies for GDC Site 3, whereas alluvium exposed in a 50-foot deep excavation to the south appeared to be flat-lying (Knur, personal communication, 2014). Inspection of boring logs for that project (Geotechnologies, 2006) suggest, based on blow counts, that older fan deposits may have been encountered at depths at or below 20 feet. Analysis of the local slopes and geomorphology by LCI (2014) supports slight adjustment of the fault along Carlos Avenue.

Other splays previously mapped (Preliminary EFZ map):

The fault trace previously projected southeast near Franklin Avenue and Whitley Avenue, was mapped based on air photo interpretation of a prominent scarp at Yucca, east of Whitley, and geomorphic interpretation by Dolan et al. (1997). Based on review of MTA data, and observations of the fault at Cherokee (Site S2-5), this northern fault trace is re-oriented to project east through the fault zone identified in the MTA data, connecting with the northern fault strand at Yucca and Ivar, and the former southeast-trending trace is removed from the final map.

The plotting of the similarly oriented “Argyle strand” through GDC Site 2 had been based on stratigraphic and hydrologic anomalies in the preliminary data that was available in 2013, data which appeared to support the prior fault interpretation by Dolan et al. (1997). Subsequent trench investigations for GDC Sites 2 and 3 have clarified the cause of these anomalies, relating them to the complex geomorphic history of this area. Consequently the previously inferred southeast-trending fault in this area is no longer a preferred interpretation for the northern fault strand. This southeast-trending segment of fault should be deleted from the EFZ map. The older fault seen in a trench at this location seems to be unrelated to the initial indications of a fault crossing this site. [Note that correlation of geologic units and interpretations relevant to

deeper faulting on Site 2 are very difficult to make as there are discrepancies between the boring logs submitted and the drawn sections].

The initial projection of a splay of the southern fault strand at BLVD 6200 was based on an apparent groundwater anomaly and projection of the southern strand from the west. A re-projection of this strand along Carlos Avenue now appears to be more likely. Although splay faults are still possible, as suggested by the preliminary data, this is a minor inferred splay rather than a continuous fault trace and need not be depicted on the final map.

Summation:

The Hollywood fault in segment 2 appears to include a northern and a southern trace and a number of other minor faults and folds. Some faults within this zone may not be recently active, but the two main strands are “sufficiently active and well defined” so that an official Alquist-Priolo Earthquake Fault Zone should be established to ensure that active fault strands may be identified and avoided in the course of future development.

Segment 3

Detailed topographic profiles prepared by LCI for review of steep slope breaks along the western portion of Segment 3 provided a more regional view of fault scarps across this segment. Our review of this new data finds a better fit for the location of the fault trace in this area. Our revised interpretation of the fault trace using vintage topographic maps also provides justification for the fault trace to be re-mapped slightly south of the initial location reported in the FER.

Segment 4

No additional data has been received and no additional interpretations have been made by CGS that would result in modification of the preliminary Alquist-Priolo Earthquake Fault Zone map in segment 4.

Segment 5

Review of the new cross section prepared for the NEIS 2A tunnel alignment and consideration of the paleochannel geomorphology along the Los Angeles River has prompted a minor revision to the fault trace as it trends eastward across the Los Angeles River Valley. Our review of the updated cross section and boring logs received from the City of Los Angeles (locality S5-1b), finds that the original projected surface trace of the fault should be shifted to the south approximately 90 feet. We have revised the location of the fault trace based on this new cross section and supporting data. The location of the adjusted fault trace is shown at locality S5-1a, b, and as a result of this southern shift of the fault trace, the EFZ boundary has also been slightly modified.

RECOMMENDATIONS

Recommendations for encompassing faults in Alquist-Priolo Earthquake Fault Zones are based on the criteria of "sufficiently active" and "well-defined" (Bryant and Hart, 2007). The principal traces of the **Hollywood Fault** as shown on Plate 1 are recommended for zoning as they are mostly well-defined and believed to be active.

Segment 2

- Modification of the fault trace on the west side of Highland at Franklin is recommended to align with our reassessment of the dominant trace at this site.
- Modification of the fault trace along Franklin Avenue east of Cherokee, to project the fault eastward along Franklin, is based on the youthful, soil-filled fault zone at the Cherokee site and controlled by boring data along Cahuenga Boulevard.
- Removal of the southeast-trending splay south of Franklin Avenue, east of Whitley is based on the fault realignment noted above.
- Modification of the northern fault trace at Yucca Street between Ivar Street and Argyle Avenue is recommended to better match the topography.
- The southeast-trending splay between Vine Street and Argyle Avenue is removed because it was shown to not exist in the Holocene section.
- Modification of the southern fault trace between Cahuenga Boulevard and Gower Street, is based on subsurface data and topographic expression.

Segment 3

- Modification of the western portion of this segment based on detailed street survey data from LCI (2014). Additionally, at Franklin Avenue east of Western Avenue, modification of the fault trace based on revised review of vintage topographic base map for this area.

Segment 5

- Modification of the fault trace based on adjustments to the boring locations provided in a new cross section and site map provided by the City of Los Angeles Department of Public Works.

PG 7237, CEG 2260
November 5, 2014

I have reviewed and concur with
the recommendations in this report

Jerome A. Treiman
PG 3532, CEG 1035
November 5, 2014

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Appendix A – Review of Soil-Stratigraphic and Paleo-Environmental Reconstruction GDC Trench - Fault Activity Investigation 6230 Yucca Street, Hollywood Area City of Los Angeles, California, report dated May 6, 2014.

Review by G. Seitz, CGS, Menlo Park
This fault activity investigation report lists 7 objectives that in part will be re-evaluated here. The focus is on the chronology of a stratigraphic section. The numbered points below are from the reviewed report.

2.) To determine the approximate age of the exposed sediments based mainly on relative soil-profile development of the several paleosols encountered in the trench;
The stratigraphic section of interest named the "Argyle Channel" consists of a sequence of clastic nested channel deposits cut into an underlying clay unit. At the onset (p.3), it is asserted that the contact between the channel and the clay represents a regional unconformity, a major climate change and the onset of "pluvial conditions", and is judged "conservatively" to have taken place ~12-16 ka ago associated with marine oxygen-isotope stage 2. The base of the channels are interpreted to be at least ~10-12 ka old, based on this assumption that the unconformity represents a regional climate change along with interpretations about the time required to form paleosols within the channel deposits.

No evidence was presented to show that the contact at the base of the "Argyle Channel" is in fact a regional unconformity as opposed to a more common local unconformity controlled by any number of geomorphic thresholds. The conclusion that this contact must be ~12-16 ka old is speculative.

The time represented by the sequence of nested channel deposits is based on 5 channel units identified as paleosols. These are described and time required to form each horizon is estimated based on selected soil stratigraphic characteristics such as pedogenic clay accumulation or rubification. Estimated time required for soil development is reported in general terms, ranging from 1 to 3 ka years or simply as ~1 ka, for example. These general estimates are not sufficiently detailed to use as an age estimate for a deposit. Quantitative estimates should be presented with a mode and uncertainty. We acknowledge the principles of soil development, i.e. weathering of a parent material to a characteristic soil profile, however to quantify age estimates requires more than what is provided. As mentioned in the report (p.2), the use of SDI or Soil Development Index requires a calibration with known age soil chrono sequences. Or, p.7: "Based on calibration with numerically dated soils elsewhere in Mediterranean climates", unfortunately these calibration correlations were not provided. The correlations with these soil chrono sequences must be made explicitly and reported in order for age estimates based on soil development to be credible. These potential correlations were not provided. In general, in the best case scenarios, soil development derived estimates have uncertainties several times greater than what was reported here. Several sources of uncertainty were reported, including unknown parent materials and truncated profiles. An example of the acknowledged uncertainty p.3: "it is almost impossible to confidently calculate the amount of translocated clay compared with that inherent in the parent material", we agree and extend this statement to the presented results, and conclude that the time periods presented are highly speculative.

4.) To assess the validity of two radiocarbon dates obtained at the site, particularly focusing on potential sample contamination.

The only numerical age estimates provided in the report are two radiocarbon dates from the nested channel deposits of the "Argyle Channel". There are principles in how to evaluate the validity of radiocarbon dates that basically fall into two categories: 1) context and 2) sample contamination.

The dated units are nested channels, which are clearly erosive and depositional, and hence reworked detrital charcoal is to be expected. It is common practice to evaluate dating results by their stratigraphic context and consistency. The 41 ka date (Yucca-1) is located 5 feet below the 4.3 ka date (Yucca-2). The close proximity and the high probability that reworking occurs in this environment allows the assessment that this sample is most likely reworked and thus only provides a maximum age constraint. Shlemon appears to share this conclusion regarding the context uncertainty, yet invokes unrelated sample contamination considerations for which no evidence is presented to discredit the radiocarbon dating results. In fact, the subsequent extensive dating from the East Trench suggests the radiocarbon dating is reliable. All eight samples from the Argyle Channel deposits have essentially identical radiocarbon dating results of 4.2-4.4 ka showing that contamination is not an issue.

At this point it is worth stepping back and reviewing the radiocarbon dating method as it relates to these two samples, and the issues cited as reasons to doubt their validity (p.6). The first reason: modern groundwater contamination of the sample. For contamination either rejuvenating or aging, in terms of the dating result, two factors are to be considered: 1) the contamination pathway, and 2) the percentage amount of contamination. Sample contamination is a well-known, and well researched issue. Shlemon references Pigatti et al. (2007) to make this point, but this research clearly shows that a rejuvenating contamination by circulating groundwater, if present, would have no effect on the age of any sample younger than 15 ka. In fact this cited paper has no relevancy for the younger Yucca-2 sample, as the title illustrates (title:" Development of low-background vacuum extraction and graphitization systems for C-14 dating of old **[40-60 ka]** samples).

Small sample size is cited as an issue to doubt the result. Small sample size does not typically bias the result older or younger, it merely increases the uncertainty range of the dating result. Radiocarbon samples go through a chemical pretreatment designed to extract all possible contaminants in the sample. These chemical procedures are generally applied to samples whether they are actually contaminated or not. The samples dated appear to be detrital charcoal, and there is no evidence suggesting the applied acid-base-acid pretreatment was not successful in removing any possible contaminants. Considering the provided information we see no reason to exclude the Yucca-2 dating result of 4.3 ka. Although considerable uncertainty exists concerning the basal age of the Argyle Channel, a simple sediment rate extrapolation suggests that is may be approximately 6 ka. In general, C-14 dates are not excluded from chronological modeling unless there are clear reasons. We do not recognize any such issues with Yucca-2.

Additional radiocarbon chronological control was obtained in the East Trench, sites 1 and 2 (Group Delta report, September 3, 2014). This report restates the opinion that the previously obtained radiocarbon date from the West Trench "Argyle Channel Sediments" is not representative of its age. The east trench also exposed the Argyle Channel sediments and several radiocarbon samples were dated. Two samples Yucca-1 and Mill-1 were discussed with locations indicated on plate 6, with ages of 4.2 ka and 4.3 ka respectively. These dates along with 5 additional dates: Mill-2 (4.3 ka), Mill-3 (4.2 ka), Mill-5 (4.3 ka), Mill-6 (4.4 ka), and Mill-7 (4.4 ka) clearly demonstrate that the Argyle Channel sediments have an age of approximately 4

ka, and not 12 ka. The remarkable consistency of all samples having nearly identical ages is further evidence that sample contamination has not occurred.

On the adjacent property to the west Langan (2012b), stratigraphy similar to the previously discussed 6230 Yucca Street site was encountered with extensive age control consisting of 22 radiocarbon sample results. A constructed cross section A-A' (plate 2), which includes borings B-1, and B-5, presents an approximately 7.7 ka sandy alluvium overlying 8.5 ka clayey alluvium. Although abundant reworked older dates are present the younger envelope of dates as viewed in a stratigraphic depth versus age scatter plot shows stratigraphic consistency. In particular boring B-5 samples show expected stratigraphic order. The sample age distribution is typical of detrital charcoal samples in alluvial sediments.

State of the Practice

Numerous fault and stratigraphic studies have established numerical age dating methods as the most reliable method to confidently estimate the age of critical sedimentary sections. The most common method is C-14 dating, and since the 1990s AMS C-14 dating, and this along with a few other numerical methods has become the generally accepted state of the practice. At this site, it is not clear how many C-14 samples were taken. Considerable uncertainty stems from the fact that only a single C-14 date exists that appears to represent the age of a section of interest. Because detrital charcoal has an inherent context uncertainty, greater numbers of samples are often used to gauge the extent of this issue at individual sites.
However, this context uncertainty is generally strongly biased towards samples that are too old due to reworking. Context uncertainty of samples being too young is usually easily avoided because burrows are recognized during the field sampling.

Since the wide-spread application of C-14 to dating sedimentary sections, soil-stratigraphic age assessments have become more of a complementary method best suited for correlations and understanding of depositional processes. Currently the soil-stratigraphic methods are largely limited to situations where no other methods can be applied, and this is definitely not the case at this site. Hence, when it is critical to assign specific numerical ages to sedimentary units the most reliable methods are numerical and these have become the standard of practice. Clearly there are uncertainties inherent with C-14 dating, but simply listing these general issues with little or no consideration of their impact on actual results is not sufficient to exclude them. The Argyle Channel as demonstrated contains C-14 samples, more samples would provide greater confidence in the age estimates. This section appears well suited to another "state of the practice" method, OSL dating. The combination of multiple methods greatly increases the confidence of an accurate chronology.

Appendix B: Timeline of Site Visits – February-August 2014
Vicinity of Yucca & Argyle

1. Millennium property (east parcel); **2.** prior KFWB property;
3. Champion site; **4.** Green site – **4a**. related borings in street
See Figure 8 for site location index

CGS staff on site
BO – *Brian Olson*; GS – *Gordon Seitz*; JH – *Janis Hernandez*; JT – *Jerry Treiman*

Feb. 14: site 2 (KFWB) - we had some access to first KFWB trench, but safety concerns prevented entering deep northern portion of trench; southern part not cleaned (BO & JT)

-- requested return visit to site 2; request denied

Apr. 7: site 2 - access to deep part of trench (north) to see evidence for older horizon; southern part not cleaned (JH, JT).

May 14: site 3 (SE corner Yucca & Argyle) - truncated visit (~45 min.) (JH & JT).

Jun 12: site 2 - eastern trench started (JH, BO, GS)

Jun 30: sites 1-2 – east trench, southern leg; fault observed (JH, BO, GS, JT)

July 1: sites 1-2 – east trench, southern leg; south-dipping fault exposed (BO, JT)

July 2: sites 1-2 – no progress (job shut down) (JH, JT, BO)

[July 7 – Letter from Group Delta restricting CGS access to trenches; restrictions were shortly lifted]

July 8: sites 1-2 – south dipping fault observed with respect to older soil (JT, JH)

July 9: site 4a – down hole observation of boring 1 (northern bucket auger boring) Drilling not observed, cuttings cleaned up prior to arrival as boring was located in the street (JH)

July 10: site 4a – visit to observe down hole in boring 2; downhole observation was not performed due to safety issues (JH)

Jul 11: site 1 – Millennium-east - south end of trench observed (JH, JT)

Jul 11: site 4 – JH allowed brief access (~ 10 min., no photos, no notes, no exploration); JT denied access.

August 21: site 4 – planned visit cancelled by property owner

EXHIBIT 3

DEPARTMENT OF TRANSPORTATION
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May 7, 2013

Councilmember Eric Garcetti
Council District 13
City of Los Angeles
200 N. Spring Street, Room 475
Los Angeles, CA 90012

RE: Millennium Hollywood Project
IGR/CEQA No. 130204AL-FEIR
Vicinity: LA-101, PM 7.37
SCH #2011041094

Dear Councilmember Garcetti:

We are writing this letter to reiterate Caltrans' concerns that the Environmental Impact Report (EIR), Final Environmental Impact Report (FEIR), and Traffic Study for this project did not fulfill the requirements of the California Environmental Quality Act (CEQA).

The Millennium Hollywood Project is a regionally significant project that will construct over 1 million square feet of mixed use development and is approximately one block from the US-101 freeway. With the existing condition of the freeway operating at Level of Service "F", this project will contribute significant traffic impacts to the US-101 freeway and its on/off ramps. The traffic study does not analyze nor does it disclose the traffic impacts that this project will contribute to the State Highway System.

After reviewing the Response to Comments from the City, Caltrans sent a letter, dated February 19, 2013, commenting on the FEIR (see attachment 3). We have not received a response from the City regarding our comments.

The Los Angeles Planning Commission approved the project on April 27, 2013. As a commenting agency, we would like to, once again, bring to the City's attention that the project impacts will likely result in unsafe conditions due to additional traffic congestion, unsafe queuing, and difficult maneuvering. As mentioned in our previous letters, these concerns have not been adequately addressed in the EIR.

In summary, without the necessary traffic analysis, Caltrans cannot agree that the FEIR substantively identifies and mitigates the Project's impacts to the State highway facilities as required under CEQA.

Caltrans staff will continue to be available to work in partnership with the City to identify adequate mitigation as a result of the traffic impacts from the Millennium Hollywood proposed project. If you have any questions, please feel free to contact me at (213) 897-9140 or Alan Lin, the project coordinator, at (213) 897-8391, and please refer to IGR/CEQA No. 130204AL.

Sincerely,

DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse
City Council Members, City of Los Angeles
Michael LoGrande, Director City of Los Angeles Planning Department

Attachments (3)

Attachment #1

DEPARTMENT OF TRANSPORTATION
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May 18, 2011

IGR/CEQA No. 110501AL-NOP
Millennium Hollywood Project
Vic. LA-101, PM 7.37
SCH # 2011041094

Ms. Srimal P. Hewawitharana
City of Los Angeles
200 N. Spring Street, Room 750
Los Angeles, CA 90012

Dear Ms. Hewwitharana:

Thank you for including the California Department of Transportation (Department) in the environmental review process for the above referenced project. The proposed project would include the construction of approximately 1,052,667 square feet of new developed floor area. The project would develop a mix of land uses including residential dwelling units, luxury hotel rooms, office and associated uses, restaurant space, health and fitness club uses, and retail establishments.

Because of the size and land uses of the project, this project may have a regional traffic impact on the State facilities. To assist in our efforts to evaluate the impacts of this project on State transportation facilities, a traffic study should be prepared prior to preparing the Draft Environmental Impact Report (DEIR). Please refer the project's traffic consultant to the Department's traffic study guide Website:

http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf

Listed below are some elements of what is generally expected in the traffic study:

1. Presentations of assumptions and methods used to develop trip generation, trip distribution, choice of travel mode, and assignments of trips to I-110, and all on/off ramps within 5 miles radius of the project site. The Department has concerns about queuing of vehicles using off-ramps that will back into the mainline through lanes. It is recommended that the City determine whether project-related plus cumulative traffic is expected to cause long queues on the on and off-ramps. We would like to meet with the traffic consultant to identify study locations on the State facilities before preparing the Environmental Impact Report (EIR).

2. Consistency of project travel modeling with other regional and local modeling forecasts and with travel data. The Department may use indices to verify the results and any differences or inconsistencies must be thoroughly explained.

3. Analysis of ADT, AM and PM peak-hour volumes for both the existing and future conditions in the affected area. Utilization of transit lines and vehicles, and of all facilities, should be realistically estimated. Future conditions should include build-out of all projects and any plan-horizon years. (see next item)

4. Inclusion of all appropriate traffic volumes. Analysis should include existing traffic, traffic generated by the project, cumulative traffic generated from all specific approved developments in the area, and traffic growth other than from the project and developments.

5. Discussion of mitigation measures appropriate to alleviate anticipated traffic impacts. These mitigation discussions should include, but not be limited to, the following:

    - Description of Transportation Infrastructure Improvements
    - Financial Costs, Funding Sources and Financing
    - Sequence and Scheduling Considerations
    - Implementation Responsibilities, Controls, and Monitoring

    Any mitigation involving transit or Transportation Demand Management (TDM) should be justified and the results conservatively estimated. Improvements involving dedication of land or physical construction may be favorably considered.

6. The Department may accept fair share contributions toward pre-established or future improvements on the State Highway System. Please use the following ratio when estimating project equitable share responsibility: additional traffic volume due to project implementation is divided by the total increase in the traffic volume (see Appendix "B" of the Guide).

    Please note that for purposes of determining project share of costs, the number of trips from the project on each traveling segment or element is estimated in the context of forecasted traffic volumes, which include build-out of all approved and not yet approved projects and other sources of growth. Analytical methods such as select-zone travel forecast modeling might be used.

    Please be reminded that as the responsible agency under CEQA, the Department has authority to determine the required freeway analysis for this project and is responsible for obtaining measures that will off-set project vehicle trip generation that worsens State Highway facilities. CEQA allows the Department to develop criteria for evaluating impacts on the facilities that it manages. In addition, the County CMP standards states that the Department should be consulted for the analysis of State facilities. State Routes mentioned in item #1 should be analyzed, preferably using methods suggested in the Department's Traffic Impact Study Guide. To help determine the appropriate scope, we request that a select zone model run is performed. We welcome the opportunity to provide consultation regarding the Department's preferred scope and methods of analysis.

We look forward to reviewing the traffic study and expect to receive a copy from the State Clearinghouse when the DEIR is completed. Should you wish to expedite the review process or receive early feedback from the Department please feel free to send a copy of the DEIR directly to our office.

As discussed in your telephone conversation on May 17, 2011 with Mr. Alan Lin, Project Coordinator, we would like to extend an invitation to meet with the City, developer, and the traffic consultant early in the process to discuss potential traffic impacts to the State facilities and possible mitigation measures prior to the preparation of the EIR.

If you have any questions, please feel free to contact me at (213) 897-9140 or Alan Lin the project coordinator at (213) 897-8391 and refer to IGR/CEQA No. 110501AL.

Sincerely,

DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse

Attachment # 2

DEPARTMENT OF TRANSPORTATION
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December 10, 2012

Ms. Srimal Hewawitharana
Department of City Planning
City of Los Angeles
200 N. spring Street, Room 750
Los Angeles, CA 90012

IGR/CEQA No. 121036AL-DEIR
Referenced to IGR/CEQA No. 110501AL-NOP
Millennium Hollywood Project
Vic. LA-101, PM 7.37
SCH #: 2011041094

Dear Ms. Hewawitharana:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The proposed project would include the construction of approximately 1 million square feet of developed floor area. The historic Capitol Records Building and the Gogerty Building would remain within the project site. The Project would demolish and/or remove the existing rental car facility. The project would develop a mix of land uses including 461 residential dwelling units, 254 luxury hotel rooms, 264,303 square feet of office space, 25,000 square feet of restaurant space, 80,000 square feet of health and fitness club space, and 100,000 square feet of retail space.

Below are Caltrans' major concerns with the Draft Environmental Impact Report (DEIR) for the Millennium Hollywood Project:

1. Caltrans submitted a comment letter dated May 18, 2011, on the Notice of Preparation (NOP) and met with the developer's consultant on September 15, 2011, to discuss Caltrans' concerns about the project's impact on the US-101 freeway and on/off ramps within the 5 miles radius of the project site. The traffic consultant acknowledged Caltrans' concerns and it was understood by both parties that the traffic procedures for analyzing impacts to the state highway system would follow standard statewide procedures outlined in Caltrans Traffic Study Guide. However, the June 2012 Traffic Impact Study (TIS), which is the basis for the traffic impact discussion in the DEIR, did not follow those procedures and does not analyze the impacts to the state highway system.

2. There was no analysis performed for any of the freeway elements. The TIS only used the Los Angeles County Congestion Management Program (CMP) criteria. However, the CMP fails to provide adequate information as to direct and cumulative impacts to the freeway mainline and ramps, per CEQA.

3. Currently, the Level of Service (LOS) for US-101 is operating at LOS F. Any additional trips will worsen the existing freeway condition. The TIS did not include a cumulative traffic analysis for US-101, which would consider the trips generated from the 58 related projects that are referred to in the DEIR, the proposed NBC Universal Project, and growth from the Hollywood Community Plan (Plan). Because the TIS prepared for the Plan in 2005 determined that build-out of the Plan would result in significant transportation impacts to the US-101, the Plan created a Transportation Improvement and Mitigation Plan (TIMP) to identify future improvements to the US-101. Since the proposed project site is located within the Plan area, the identified improvements should have been taken into consideration, as well as improvements listed in Metro's Long Range Transportation Plan.

4. Page IV.K.1-60 of the DEIR states: "The Project would result in a less than significant impact with respect to trip generation upon CMP locations and on freeway segments. No mitigation is required." This conclusion is not based on any credible analysis that could be found anywhere in the DEIR. It is Caltrans' opinion, based on the work that we have done in this area, that this project will result in significant impacts to the state highway system.

5. The submitted traffic analysis did not include the following ramp intersections that are closest to the project site, which may be significantly impacted by this development:

   - SB Route 101 on-ramp from Argyle Avenue
   - SB Route 101 off-ramp to Gower Avenue
   - NB Route 101 off-ramp to Gower Avenue
   - SB Route 101 off-ramp to Cahuenga Blvd.
   - SB Route 101 on-ramp from Cahuenga Blvd.
   - SB Route 101 off-ramp to Vine Street

   The traffic analysis at these off-ramps needs to show projected queue build-up upstream of the off-ramp. Although most of the on-ramps are meter controlled, the analysis needs to show how the added/over-flow volume to the on-ramp may affect other nearby intersections, including off-ramps. Caltrans is concerned that the freeway ramps will back up, creating a potentially unsafe condition. To ensure the ramps do not back up, the intersections adjacent to the ramps must be able to absorb the off-ramp volumes at the same time as they serve local circulation and land uses.

6. As shown in the DEIR, Table 5 Project Trip Generation, the project will generate a 19,486 average daily vehicle trips with 1,064/1,888 vehicle trips during the AM/PM peak hours. These volumes appear to be low and Caltrans requests that the lead agency verify

them. Also, the trip reduction credits taken are not in compliance with the Caltrans Traffic Impact Study Guide and any deviation should be properly justified and substantiated. For example, the 30% reduction of the retail pass-by trips is significantly high without justification. Utilizing such high reduction rates will result in inadequate identification of traffic impacts and mitigation, thus violating CEQA.

To address these concerns, an analysis for the project's impacts to the freeway system should be performed based on the proposed scope of the project as described in the DEIR and would need to include all of the following to determine the actual impact of this project on the State facilities in the project vicinity:

a. If the project will be developed in phases, the project added demand and trip assignment to US-101 should be based on each phase of the project, otherwise it should be based on 100% occupancy.

b. The Trip Generation figures and its distribution need to be forecasted based on a Select Zone Analysis. Based on the magnitude of the project and its close proximity to US-101, the trip assignment appears to be unreasonably low. Please elaborate on the trip assignment methodology utilized.

c. Trip Generation figures from other sources should be cross-referenced by the source, page number, year, and table numbers.

d. The off ramps on NB and SB US-101, between Vermont Avenue and Highland Avenue, which would represent the most impacted area by the proposed Development, should be analyzed utilizing the Highway Capacity Manual (HCM) 85th Percentile Queuing Analysis methodology with the actual signal timings at the ramps' termini.

e. Similarly, the on ramps on NB and SB US-101, within the same area, should be analyzed utilizing the same methodology and with the actual metering rates. These rates can be obtained by contacting Ms. Afsaneh Razavi, Senior Transportation Engineer, Caltrans Ramp Metering Department at (323) 259-1841.

f. An HCM weaving analysis needs to be performed for both the NB and the SB mainline segments, between the on and off ramps within the same area, utilizing balanced traffic demands entering and exiting the weaving segments.

Caltrans is concerned that the project impacts may result in unsafe conditions due to additional traffic congestion, unsafe queuing, and difficult maneuvering. These concerns need to be adequately addressed in the EIR. In summary, without the necessary traffic analysis, Caltrans cannot recognize the TIS and DEIR as adequately identifying and mitigating the project's impacts to the State highway facilities.

If you have any questions, please feel free to contact Alan Lin the project coordinator at (213) 897-8391 and refer to IGR/CEQA No. 121036AL.

Sincerely,

DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse

Attachment #3

DEPARTMENT OF TRANSPORTATION
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February 19, 2013

Ms. Srimal Hewawitharana
Department of City Planning
City of Los Angeles
200 N. spring Street, Room 750
Los Angeles, CA 90012

IGR/CEQA No. 130204AL-FEIR
Referenced to
IGR/CEQA No. 110501AL-NOP
IGR/CEQA No. 121036AL-DEIR
Millennium Hollywood Project
Vic. LA-101, PM 7.37
SCH #: 2011041094

Dear Ms. Hewawitharana:

Thank you for the opportunity to review the Final Environmental Impact Report (FEIR) for the Millennium Hollywood Project (Project). This letter serves to reiterate our concerns that the FEIR does not fulfill the requirements of the California Environmental Quality Act (CEQA).

We have the following comments after reviewing the FEIR:

1. CEQA requires the preparation of an EIR to identify a project's significant effects on the environment, identify alternatives to the project, and devise measures to mitigate or avoid those effects. (Pub. Resources Code §§ 21002.1, subd. (a) & 21061.) This Project is a project of statewide, regional, or areawide significance. (CEQA Guidelines § 15206, subd. (b).) When a project is of statewide, regional, or areawide significance, CEQA requires that the lead agency consult with responsible agencies, state agencies with jurisdiction over resources affected by the project, and public agencies with jurisdiction over a transportation facility. (Pub. Resources Code §21092.4, § 21153; CEQA Guidelines § 15086.) Caltrans notified the City of Los Angeles (City) that to properly assess the potential impacts to the State Highway System (SHS) from the Project, a proper traffic impact study (TIS) must be completed.

2. A valid TIS represents the linchpin in Caltrans' efforts to assess a project's potential impacts to the State transportation infrastructure. To assist the City in its preparation of a valid TIS, Caltrans informed the City that the TIS needs to comply with the "*Caltrans Guide for the Preparation of the Traffic Impact Studies*". Unfortunately, the City did not work with Caltrans and instead relied on its own Congestion Management Program (CMP), which **DOES NOT** adequately study the impacts to the SHS. Because the TIS did not adequately analyze the traffic impacts, the City therefore did not identify adequate mitigation. Caltrans is concerned that the Project impacts may result in unsafe conditions due to additional traffic congestion, unsafe queuing, and difficult maneuvering. The City's analysis incorrectly focuses its attention on impacts *to the CMP from the project*. CEQA does not call for an

evaluation of the impacts of a proposed project on an existing plan; it is concerned with the impacts from the project upon the environment, which is defined as the existing physical conditions in the affected area. The City did not study impacts to or identify adequate mitigation for the SHS.

3. Caltrans operates a multi-modal transportation system across the State, and is responsible for the planning, building and maintenance of that system. (Sts. & Hwy. Code § 90 et seq.) While the lead agency for a project has the authority to determine the initial significance of the project's impacts under CEQA, Caltrans has the ultimate authority under the Streets and Highways Code, as the owner and operator of the facilities, to make that determination on the SHS.

4. The intent of the CMP is to assist federal, state and local agencies in developing and implementing comprehensive planning strategies to handle traffic congestion. (Gov. Code, § 60588) Unfortunately, the CMP process does not adequately evaluate the impacts to the SHS, nor does it make the City the final authority over highway safety issues. As the owner and operator of the SHS facilities, Caltrans provides comments on environmental documents and the analysis of impacts to the SHS.

5. 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. (CEQA Guidelines, Section 15200.) The TIS did not provide Caltrans, or any other reader, with sufficient traffic analysis to properly review and assess the traffic assumptions, lead agency analysis, and conclusions regarding the Project and its impacts.

6. The CMP does not capture the same data for analysis that the Highway Capacity Manual (HCM) uses. For example, the CMP (1) fails to analyze off-ramps, (2) fails to analyze freeway impacts, including where existing LOS is F, if the Project trip assignments is less than 150 cars, (3) uses a flawed percentage ratio to determine the significance of impacts, and (4) incorrectly analyzes cumulative traffic impacts.

7. The CMP, Section D4 Study Area, indicates that "The geographic area examined in the TIA must include the following, ***at a minimum***" and "Caltrans must also be consulted through the Notice of Preparation (NOP) process to identify ***other specific locations*** to be analyzed on the state highway system." Caltrans identified potential study locations for the Project, but the City does not include an analysis of these locations in the FEIR.

8. CEQA requires mitigation for site-specific issues. However, the CMP does not include site-specific safety considerations, nor is it based on an appropriate measure of effectiveness for site-specific considerations. Therefore, analysis under the CMP alone does not comply with CEQA.

9. The FEIR fails to provide queuing analysis on the off-ramp where the freeway ramps will back up, creating a potential unsafe condition. As Caltrans has already informed the City, the off-ramps which would represent the most impacted area from the Project should be analyzed utilizing the HCM 85th percentile queuing analysis methodology with the actual signal timings at the ramps termini. The City did not do this analysis in the FEIR, nor does the CMP address this issue.

10. The CMP improperly uses a percentage criterion for determining the significance of traffic impacts. The use of a "ratio theory" or "comparative approach," such as the CMP's "2% increase in trips" criterion, improperly measures a proposed project's incremental impact relative to the existing cumulative effect rather than measuring the combined effects of both the project and other relevant past, present, and future projects.

11. A lead agency that intends to approve developments with unmitigated significant traffic impacts must make Findings that no measures are feasible to mitigate those impacts, and must issue a Statement of Overriding Considerations, which indicates that allowing this project to proceed would be in the best interest of the general public.

12. Caltrans' Concerns with the City's Response to Comments in the FEIR:

    a) **Concerns regarding Response to Comment Nos. 03-2 and 03-5**
    The Traffic Impact Study Guide (TISG) states that "Caltrans endeavors to maintain a target LOS at the transition between LOS C and LOS D on the State highway facilities. However, Caltrans acknowledges that this may not always be feasible and recommends that the lead agency consult with Caltrans to determine the appropriate target LOS." The City failed to consult with Caltrans to determine the appropriate target LOS for this project.

    What's more, the State Highway facility can absorb additional traffic without degradation, if it is operating at a higher level of service where there are uncongested operations, higher travel speeds and freedom of movement. However, the greater the congestion, the lower the threshold of traffic needed to create an impact. The TISG describes the trip generation changes that would trigger the need to consult with Caltrans or that are likely to indicate a probable significant effect. At certain locations, even less than 50 peak hour trips may have a significant impact on operations and the LOS. Impacts are most often considered significant by Caltrans if they might create an unsafe condition by increasing or relocating traffic demand, thereby increasing the risk of turn movement conflicts on the SHS. The other major concern is when the integrity of the SHS would be at risk from physically undermining or destroying the structures. Traffic that exceeds an operational or capacity threshold will have a different level of significance depending on whether the analysis looks at mainline or access locations.

    b) **Concerns regarding Response to Comment Nos. 03-3, 03-4 and 03-5**
    The Transportation Modeling Procedures and Results (Appendix B of FEIR) demonstrates that the Project adds traffic to the freeway. Cumulatively, the 58 related projects that are referred to in the DEIR, the proposed NBC Universal Project and the Hollywood Community Plan, also add traffic to the freeway and should have been included in the model. Route 101 already operates at LOS F in the vicinity of the Project. Regardless of programs that include upgrades to the transit system or TDM to improve traffic conditions, the net effect of any additional trips likely will worsen the existing freeway condition. Adopting an arbitrary value of 150 or more trips to constitute a significant impact is not a realistic approach and does not capture the impacts to the SHS. Any additional traffic to the mainline, particularly where the LOS is operating at "F" or worst, needs to be mitigated in compliance with CEQA.

Page 1 of the Transportation Modeling Procedures and Results states, "the Hollywood Community Plan Update was also determined not to have a significant impact on the freeway system." This statement is false; according to the DEIR (SCH No. 20020410009) for the Hollywood Community Plan Update (Page 4.5-30), the proposed plan compared to the 2005 conditions would result in an unavoidable significant adverse transportation impact and the Plan offers transportation improvements to mitigate the traffic impacts. The Hollywood Community Plan TIMP includes LRTP Highway/Freeway Improvements (page 48), LRTP Arterial Street Improvements (page 49), and Capital Improvements (page 66). All of those improvements include freeway mainline and on/off ramp improvements in the project vicinity.

Caltrans will consider any and all improvements that would benefit the SHS, including the ATSAC/Adaptive Traffic Control System Highway and Street Traffic Signal Management System. Instead, Caltrans was and still is unable to assess the benefits of such a program because there is no traffic study in the EIR that includes the necessary analysis.

c) **Concerns regarding Response to Comment Nos. 03-6, 03-11, and 03-14**

The listed ramp intersections *are* "those at which the Project traffic impacts have the potential to be significant and substantial." The study locations should include all freeway elements, including freeway mainline, weaving sections, meters, ramps, and ramp junctions, in the study area. The traffic impact analysis methodologies are spelled out in the Caltrans guidelines and are used throughout the State when State Highway facilities are involved. For off-ramps and ramp junctions, Caltrans uses the HCM for analysis. The FEIR is flawed because the City relies upon the Critical Movement Analysis (CMA), which does not address off-ramp queuing that can lead to operational and safety issues.

Without a queuing analysis at the intersections of US-101 off-ramp (see Caltrans letter dated December 10, 2012, Item #5 and #6d), neither Caltrans nor the City can determine whether the traffic from the off-ramps will back up to the mainline, thus creating an unsafe condition to the public. Therefore, the FEIR fails to provide and analyze the impacts upon the SHS from queuing. Again, please provide the traffic analysis at the specified locations, per our Comment Nos. 03-6 and 03-11, as there may be significant impacts from the Project.

d) **Concerns regarding Response to Comment No. 03-7**

Caltrans concurs with Comment No. 59-27 (Jordon, David). The internal capture rates in Table IV.K.1-4 lack support. LADOT relies on ITE studies from Florida from the early 1990s and these studies are outdated. Instead, the Texas A & M University, Texas Transportation Institute for the Federal Highway Administration collected updated data at Legacy Town Center in February 2010. Please submit this data and the corresponding analysis for this Project to Caltrans for our review.

e) **Concerns regarding Response to Comment No.03-9**

Limitations exist regardless of the type of analysis used, but Caltrans prefers the Select Zone Analysis. If the City instead utilizes a manual approach, the analysis should include

an appropriate study area that addresses impacts to State Highway facilities. Consultation with Caltrans is a critical step in the scoping process and all stakeholders should be included in the environmental review; unilateral review and approval by LADOT is not sufficient.

The traffic model analysis (FEIR Appendix B) provides alternative values for the traffic on US-101 which select locations that are too closed to the project resulting in an incomplete model analysis for the project trips distribution on the US-101 where only small amount of trip is assigned to US-101.

f) **Concerns regarding Response to Comment No. 03-13**
The City must conduct an HCM weaving analysis for both the northbound and southbound mainline segments, between the on- and off-ramps within the project vicinity utilizing balanced traffic demands entering and exiting the weaving segments. This would show whether the traffic flow will operate safely.

As stated above, Caltrans is concerned that the project impacts may result in unsafe conditions due to additional traffic congestion, unsafe queuing, and difficult maneuvering. These concerns need to be, and have not been, adequately addressed in the EIR. In summary, without the necessary traffic analysis, Caltrans cannot agree that the FEIR substantively identifies and mitigates the Project's impacts to the State highway facilities as required under CEQA.

We have been and will continue to be available to work in partnership with the City to identify adequate mitigation as a result of the traffic impacts from the Millennium Hollywood proposed project. If you have any questions, please feel free to contact me at (213) 897-9140 or Alan Lin, the project coordinator, at (213) 897-8391, and please refer to IGR/CEQA No. 130204AL.

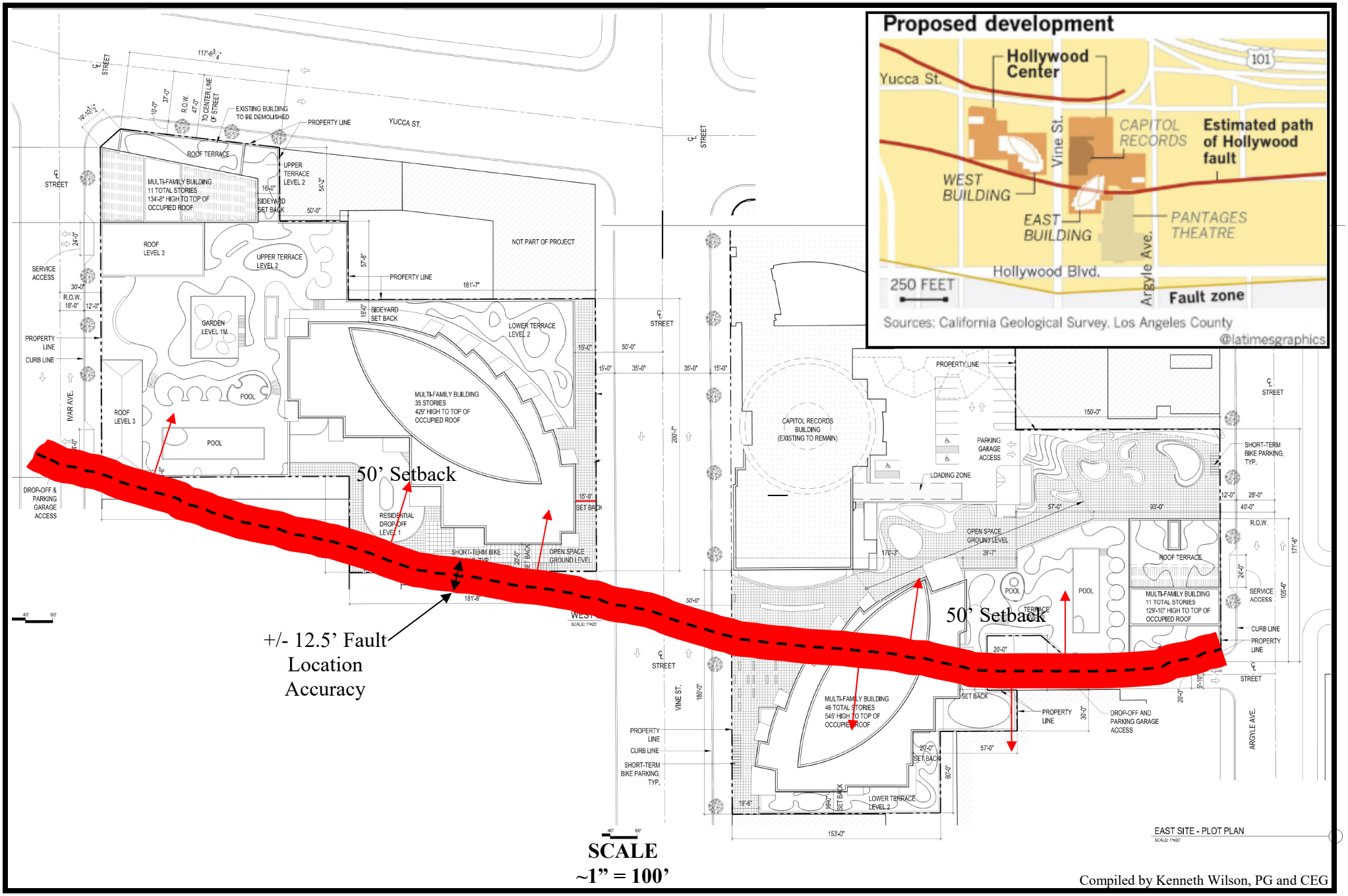
Sincerely,

Dianna Watson

DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse
Jon Foreman, City of Los Angeles

EXHIBIT 4



PROPOSED HOLLYWOOD CENTER – APPROXIMATE LOCATION OF HOLLYWOOD FAULT

KENNETH WILSON

Principal Engineering Geologist

EDUCATION

University of California at Riverside, B.S. Geological Sciences, 1967
University of California at Riverside, M.S. Geological Sciences, 1972

PROFESSIONAL REGISTRATIONS

Professional Geologist, California, #3175 [Issued 1-08-1974; Expires 2-28-2019]
Certified Engineering Geologist, California, #928 [Issued 1-08-1974; Expires 2-28-2019]

PROFESSIONAL SUMMARY

Kenneth Wilson is responsible for management, technical supervision and performance of engineering geology, geotechnical, environmental impact, and environmental geology projects, and is a Registered Geologist (#3175) and Certified Engineering Geologist (#928) in California. He performs and supervises environmental assessments for commercial, industrial and government projects covering the disciplines of hydrogeology, engineering geology, geology, hydrology, seismicity, tectonics, faulting, mineral resources, and waste management. Geotechnical studies include fault evaluations, ground failure assessments, slope stability and foundation materials characterization, liquefaction potential, flooding hazards and site selection. The emphasis of his work is on defining geologic and geotechnical conditions, and hazards, which may affect the feasibility and design of any type of development project. Mr. Wilson has over 40 years of technical performance and project experience in critical facilities studies, radioactive/mixed/hazardous waste management, energy plant site licensing, impacts to surface and groundwater resources, waste disposal site development, dams and reservoirs and numerous other engineered structures. Specialized experience is in engineering geology in support of geotechnical studies, site selection/evaluation, seismic safety, integration of multidisciplinary technical teams, project management, and EIRs, EAs, and EISs.

PROFESSIONAL EXPERIENCE

Wilson Geosciences, Engineering and Environmental Geology [1989-Present]
Principal Engineering Geologist: Responsible for all management, technical and marketing activities for engineering geology, environmental impact, and environmental geology projects. Performs and supervises environmental assessments for commercial, industrial and government projects covering the disciplines of hydrogeology, engineering geology, geology, hydrology, seismicity, tectonics, faulting, mineral resources, and waste management. Geotechnical studies include fault evaluations, ground failure assessments, slope stability and foundation materials characterization, liquefaction potential, flooding hazards and site selection.

The Earth Technology Corporation [1974-1989]
Corporate Vice President: Mr. Wilson worked from late-1987 to mid-1989 for the Chairman/CEO and the President/COO performing the following tasks: assisting in evaluation of several potential acquisitions; management of pre-acquisition due diligence; evaluation of four new office geographic expansion options; managed preparation of corporate health and safety program and H/S technical procedures. In 1989 was principal-in-charge for start-up of environmental engineering and hydrogeology portion of Technical Assistance Contract with DOE/Nevada Operations, Environmental Safety and Health Branch.

Vice President; Director, Program Management: Mr. Wilson reported to the President of the Western Division (1985-1987) and was responsible for business development, project execution and strategic planning for market areas related to radioactive (high, mixed, and low-level) waste management programs, energy and mineral resources, geophysics and offshore technology. Emphasis was on geosciences, engineering, environmental, and program management disciplines for site selection, site evaluation/characterization, site remediation and specialized advanced technology considerations in hydrologic modeling, rock mechanics testing and geophysical exploration.

Vice President, Associate and Senior Manager: Mr. Wilson had numerous challenging technical and management responsibilities and assignments during the period 1974-1988. There was a wide range of projects for which he had a technical role, either performance, supervisory, or management in scope. A substantial portion of the time he was Program Manager for the Missile-X (MX) ICBM, Siting and Characterization Studies in the Western and Midwestern

United States: for United States Air Force, Ballistic Missile Office, and the Southern Region Geologic Project Manager (SRGPM) in Mississippi, Louisiana, Texas, Georgia, South Carolina, Virginia, Maryland for Office of Nuclear Waste Isolation (ONWI) and Office of Crystalline Repository Development (OCRD). These projects were national in scope and involved most geologic, geotechnical, geophysical, environmental, and hydrologic disciplines

Converse Consultants (formerly Converse, Davis and Associates) [1970-1974]

Staff and Project Geologist: Conducted and supervised investigations in southern, central, and northern California, southern Nevada, and eastern Washington. Groundwater and related studies included permeability, transmissibility, and storage coefficient studies at Searles Lake, California; earth dam projects at Yucaipa, Littlerock, and Anaheim, California; groundwater contamination (hydrocarbons) evaluation in the Glendale, California area; wastewater and water treatment facilities in Solvang, Lompoc, Victorville, Thousand Oaks, and Sylmar, California. Numerous earthquake and fault risk studies were performed for earth dams and reservoirs, high-and low-rise buildings, hospitals and schools, proposed nuclear power plant sites, water storage tanks, and large-diameter pipelines. Landslide and other slope failure studies were performed in rock and soil terrains. Offshore studies planned and conducted include coastal geophysical (seismic reflection, side scan sonar, fathometer), sampling and scuba investigations near Monterey and Dana Point, California.

RELEVANT CEQA SKILLS, KNOWLEDGE, AND EXPERIENCE RELATED TO GEOTECHNICAL AND ENVIRONMENTAL HAZARDS

Wilson Geosciences Inc. (WGI) was organized in 1989 and is a California corporation that specializes in many areas of geological and engineering geology services, providing its clients with top-quality personal, service, and technical capabilities. WGI has the personnel, capability, and expertise to perform, geologic and engineering geologic services for entitlement, environmental planning and permitting, design, and construction projects in southern California. Mr. Kenneth Wilson, as Principal Geologist, has more than 30 years of experience in performing various sizes and types of complex and routine investigations in the southern California region. He manages and performs each project on a day-to-day basis.

The specific geologic and engineering geologic services offered for a wide range of projects by WGI are:

- Environmental Impact Analysis—IS, MND, EIR, and EIS
- Engineering Geology
- Shallow Subsurface Geophysical Surveys (e.g., radar [GPR], magnetometer, electrical resistivity, seismic refraction/reflection)
- Fault Activity Assessments
- Hydrogeology and Groundwater Studies
- Site/Route Selection and Characterization
- Railroad and Pipeline Risk Assessments

Approximately 60-percent of WGI work has been CEQA or NEPA-related. During his career, Mr. Wilson has conducted technical investigations for major facilities, including subsurface sampling (e.g., drilling and cone penetration testing [CPT]) and geophysics (e.g., seismic reflection, seismic refraction, and down hole surveys). Mr. Wilson has prepared Geology and Soils sections of CEQA/NEPA documents based on review of existing technical reports and maps, and performance of field surveys under applicable environmental laws, regulations, and policies. In addition, he has provided technical review and comment related to technical documents for proposed tunnel routes in southern California.

RELEVANT PROJECTS—COUNTY OF LOS ANGELES

Development and Re-development CEQA Projects

- Proposed Pacoima/Panorama City Redevelopment Plan Amendment/ Expansion Area, 7,136 Acre Project Area, I-210 Freeway and Sunland Boulevard, I-210 on the north, the I-5/I-405 on the west, and Victory Boulevard on the south, City of Los Angeles, California
- Geology and Soils Section Little Tokyo Redevelopment Plan
- Geologic Input Arts and Crafts Center for the Social Hall Upgrades for the Avalon Gardens Housing Development
- Sakaida & Sons Surface Mine Project EIR near Pacoima Canyon, Los Angeles County, California
- Geology/Seismicity/Geotechnical Conditions and CEQA Checklist Analysis 8601 Wilshire Boulevard Development
- Fault Investigation--Proposed Stonebridge Estates Development Site, 12400 Big Tujunga Canyon Road
- Geology Conditions La Placita Project EIR
- Geologic Input to Eugene Debs Park Framework Plan

- City Dock No. 1 Marine Research Center Project EIR, Port of Los Angeles (Port) at Berths 56-60 and 70-71, Los Angeles, California
- Hsi Lai Buddhist Community Center 20,000-square-foot Multipurpose Facility MND, Hacienda Heights, Los Angeles County, California
- Kenneth Hahn Recreation Area EIR, Baldwin Hills
- Geologic Description of the MTA Exposition Corridor Transit Project Phase II Project Area
- Geology, Soils, Seismic and Groundwater Environmental Impact Statement for the expansion of Los Angeles International Airport
- Geology and Soils Section West Los Angeles College Facilities Master Plan Draft EIR

Fault Activity and Earthquake Evaluations (Technical and CEQA Documents)

- Geotechnical, Geologic and Earthquake Assessment for University in Southern California
- Evaluation of Surface Faulting at the Blue Star Trailer Park Following the 1971 San Fernando Earthquake
- Geologic and Fault Assessment for the Van Nuys Boulevard Corridor for Transportation Projects
- Fault Rupture Study Area (FRSA) Report for the Canoga Transportation Corridor Lassen Street/Railroad Overcrossing, Chatsworth
- Fault Investigation Los Angeles County Fire Department (LACFD) Barton Heliport Pacoima Facility, Verdugo Fault, Pacoima
- Fault Investigation Los Angeles Mission College Main Campus, San Fernando Fault, Sylmar
- Fault Investigation Los Angeles Mission College Health/Fitness and Athletics Complex and East Campus Building, San Fernando Fault, Sylmar
- Post-Earthquake Damage and Fault Assessment Los Angeles County Juvenile Hall, Sylmar
- Surface Faulting Potential Evaluation, Holy Cross Hospital, Mission Hills
- Fault and Earthquake Evaluation for a Bridge Extension West of Ballona Creek Centerline
- Fault Investigation Review to Support an EIR for the 2935± Acre AERA-Master Planned Community, near Diamond Bar, Counties of Los Angeles and Orange, California

Facilities and Infrastructure (Technical and CEQA Documents)

- Engineering Geology Review LADWP River Supply Conduit Improvement Upper Reach Project EIR
- Geology, Soils, Seismic and Groundwater West Basin Entrance Widening and Remediation of the Chevron Marine Terminal, Port of Los Angeles
- Supervision, Monitoring, and Inspection of Port of Los Angeles Dredging Operations Terminal Island Treatment Plant Interim Outfall (TITPO) Modification Dredging Project based on Previous Geophysical Surveys and Bottom Sampling
- Geology and Soils Section for Environmental Evaluation Union Station Run-through Tracks Project
- Geology Input Barham Boulevard Bridge Widening Replacement Project
- Geologic Study for the North Broadway Sidehill Viaduct Project
- Core Sampling Study In Support of Riverside Fairy Shrimp Conservation: Los Angeles International Airport Airfield Operations Area and Los Angeles/El Segundo Dunes Sites
- Engineering Geology LADWP Enhanced Coagulation Facilities to Support a Preliminary Geotechnical Investigation, Sylmar
- Post-Earthquake Damage and Landslide Assessment, Joseph Jensen Treatment Plant, Granada Hills
- Geology/Faulting/Landslide Assessments Sunshine Canyon Landfill Engineering, City and County of Los Angeles, Sylmar
- Geology Evaluation/Scuba Inspection King Harbor Marina Quay Walls for Possible Deformation due to Suspected Ground Settlement, Redondo Beach
- Engineering Geologic Inspection Residential Property, 1570 Casale Road, Pacific Palisades
- Eugene Debs Park Geology Review, Los Angeles
- Victoria Park Cricket Field MND, Carson
- Alhambra City Gardens Soil Compaction Testing, Alhambra
- Victoria Golf Course EIR, Carson
- Los Angeles River Master Plan EA/ND, Los Angeles County
- Bonelli Park Engineering Geology and Geophysical Investigation, San Dimas
- Powder Canyon Country Club EIR, La Habra

- Geologic Input to Geotechnical Investigation Seismic Retrofit Evaluation for Adams Boulevard/Flower Street Overcrossings Mid City/Exposition Light Rail Transit Project
- Geology and Soil Technical Input: Addendum No. 1 to the Final Mitigated Negative Declaration—Renovations to the Hollywood Bowl Food and Beverage Facilities
- Port of Los Angeles, West Basin EIR--Geology and Soils Section
- Port of Long Beach, Cemera Long Beach LLC Construction Aggregate Terminal, 1710 Pier B Street, Long Beach—DEIR Geology and Soils Section
- Gerald Desmond Bridge, Long Beach—Analysis of Drilling Results
- Port of Los Angeles, Dredging—On-site Operational Monitoring
- Engineering Geologic and Fault Investigations for the 6.0-MG Van Nuys Reservoir, San Gabriel Valley Water District, San Marino, California
- Geologic Investigation for 2.7-MG Whittier Reservoir, Whittier, California for Suburban Water Systems.
- Geologic Fault Study for the 1.2-MG Mira Monte Reservoir, Sierra Madre, California for RBF, the City of Sierra Madre and the U.S. Army Corps of Engineers.
- Engineering Geologic Investigation at Amherst Reservoir, La Verne, California for the City of La Verne and Civiltec Engineering

Schools and Other Critical Facilities (Technical and CEQA Documents)

- Los Angeles Unified School District Railroad and Pipeline Safety Evaluations: These studies included consideration of geologic and seismic conditions at each of the 30 sites. [CR = Central Region and SR = Southern Region] CRMS7, CRES16, SRES2, SRMS2, SLAHS3, SRHS4, CRES18, SRES4, SRHS2, CRHS13, Dominguez ES, SRHS13, Ramona HS, SRHS8, SRES7, CRHS16, SRES5, Solano ES, Glassell Park EC, Dominguez ES, ELAHS7, Bell EC, CRHS14, SRHS8-1, SRMS3, SRES9, SRHS7, Sierra Vista ES, University HS, Roosevelt Small Learning Center, and SRHS8-18.

GENERAL PLAN PROJECTS

Wilson Geosciences Inc. also has been responsible for the geology, seismic, and soils [Safety Element technical background report and/or EIR section] portions of the following General Plan updates:

- Arcadia
- Rosemead
- San Marcos
- Laguna Hills
- Azusa
- Bellflower
- Claremont
- South El Monte
- Ontario SOI Amendment
- Chino
- Riverside
- City of Los Angeles Framework
- Huntington Beach
- San Clemente
- California City
- American Canyon

PROFESSIONAL ORGANIZATIONS

Member Association of Engineering and Environmental Geologists, National Section
Member Association of Engineering and Environmental Geologists, Southern California Section

COURSES, SEMINARS, AND WORKSHOPS

Seismic Interpretation for Geologists, by the Oil and Gas Consultants International, Inc.
Intensive Short Course, Houston, Texas
Engineering Geophysics Short Course, Colorado School of Mines, Office of Continuing
Education, Golden, Colorado
Technical Writing Seminar, Earth Technology Corporation, Long Beach, California
Fundamentals of Ground-Water Monitoring Well Design, Construction, and Development, Las Vegas, Nevada
Field Practices for Collecting Representative Ground-Water Samples, Las Vegas, Nevada
New Developments in Earthquake Ground Motion Estimation and Implications for Engineering Design
Practice, Seminar organized by Applied Technology Council and funded by U.S. Geological Survey,
Los Angeles, California
Seismic Hazards Analysis, Course sponsored by Association of Engineering Geologists, Los Angeles,
California

EXHIBIT 5

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Attorneys for Plaintiff MILLENNIUM TOWER ASSOCIATION

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
10/13/2017
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MILLENNIUM TOWER ASSOCIATION, a California nonprofit mutual benefit corporation,

Plaintiff,

v.

MISSION STREET DEVELOPMENT LLC, a Delaware Limited Liability Company; MISSION STREET HOLDINGS LLC, a Delaware Limited Liability Company; MILLENNIUM PARTNERS MANAGEMENT LLC, a New York Limited Liability Company; MILLENNIUM PARTNERS LLC, a New York Limited Liability Company; MILLENNIUM PARTNERS I, INC., a New York Corporation; CHRISTOPHER M. JEFFRIES, an individual; PHILIP E. AARONS, an individual; PHILIP H. LOVETT, an individual; SEAN JEFFRIES, an individual; JOHN LUCIANO, an individual; WEBCOR CONSTRUCTION, INC., an unknown business entity; WEBCOR CONSTRUCTION LP, dba WEBCOR BUILDERS, a California Limited Partnership; HANDEL ARCHITECTS LLP, a New York Limited Liability Partnership; TREADWELL & ROLLO, INC., an unknown business entity; T & R CONSOLIDATED, INC., a California Corporation and successor in interest to TREADWELL & ROLLO; LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC., a New Jersey Corporation and successor in interest to TREADWELL & ROLLO; DESIMONE CONSULTING ENGINEERS LLC, a Delaware Limited Liability Company; DESIMONE

Case No. CGC-17-557830

THIRD AMENDED COMPLAINT FOR:
1) VIOLATION OF CAL. CIV. CODE § 895 *ET SEQ.*;
2) NEGLIGENCE;
3) BREACH OF EXPRESS WARRANTIES;
4) BREACH OF IMPLIED WARRANTIES;
5) STRICT LIABILITY;
6) NEGLIGENT MISREPRESENTATION;
7) FRAUDULENT MISREPRESENTATION;
8) FRAUDULENT CONCEALMENT;
9) BREACH OF FIDUCIARY DUTY;
10) VIOLATION OF CAL. BUS. & PROF. CODE § 17200 *ET SEQ.*;
11) INVERSE CONDEMNATION;
12) TRESPASS;
13) NUISANCE;
14) VIOLATION OF CAL. CIV. CODE § 832; AND
15) VERIFIED PETITION FOR WRIT OF MANDATE.

JURY TRIAL DEMANDED

CONSULTING ENGINEERS, PLLC, a California Professional Limited Liability Company; TRANSBAY JOINT POWERS AUTHORITY, a public entity; ARUP NORTH AMERICA LIMITED, a United Kingdom Corporation; TRANSBAY TOWER LLC, a Delaware Limited Liability Company; BOSTON PROPERTIES, INC., a Delaware Corporation; CLARK-HATHAWAY DINWIDDIE, a Joint Venture; and DOES 1 through 100,

Defendants.

I. INTRODUCTION

1. The Millennium Tower, a 419-unit luxury condominium project at 301 Mission Street in San Francisco, was the tallest residential high rise on the West Coast when it opened in 2009. Shimmering like a translucent 58-story crystal, this landmark structure attracted a diverse community of more than a thousand residents. Urban professionals welcomed the opportunity to live minutes from the financial district's hive of corporate headquarters; retirees and empty-nesters traded the equity in their suburban homes for the panoramic vistas of a waterfront skyscraper; and young families with children embraced the unique experience of a vertical neighborhood. With units averaging nearly $2 million, the tower's developer, Millennium Partners, generated in excess of $750 million in sales between 2009 and 2013.[1]

2. To the dismay of those who sank so much of their life savings into the Millennium Tower, the Tower itself is now sinking—and has been for years, even before the first unit was sold in 2009. As much of the Bay Area and beyond has come to learn, Millennium Partners erected this glamorous building on an improperly designed and constructed foundation system, then looked the other way as the building was further besieged by other construction defects and negligent construction practices. By the time it debuted as "the luxury benchmark for San Francisco city living,"[2] the high-rise tower had already sunk more than 8 inches into the

[1] J.K. Dineen, *Millennium Tower in San Francisco is a $750M sellout*, S.F. Bus. Times (Apr. 5, 2013), http://www.bizjournals.com/sanfrancisco/print-edition/2013/04/05/millennium-tower-in-san-francisco-is.html.

[2] Millennium Partners, http://millenniumptrs.com/about-mp/ (last visited Mar. 28, 2017).

mud, sand, and clay on which it was built. And the sinking continues unabated. The Tower has since dropped another 8 inches, bringing it now 16 inches closer to the "diverse tapestry of arts, culture and culinary delights"[3] that originally drew its residents to this vibrant South of Market neighborhood. As the Tower has sunk, it has also tilted. The precast concrete floors are now non-level, and at the top, where a penthouse unit sold for $9.8 million, the tower leans by more than 12 inches.

3. But those who knew of the high rise's troubles kept it secret for years, and two parties even memorialized their agreement to keep all exchanged documents and information confidential.[4] Millennium Partners and the Transbay Joint Powers Authority ("TJPA"), which was preparing to build an underground and above-ground transit center ("Transit Center") on an adjacent site, entered into a bilateral confidentiality agreement covering all documents and information exchanged. Rejecting transparency and accountability, Millennium Partners and the TJPA agreed that the "[d]ocuments and information" exchanged about the Property and the Transit Center were proprietary and confidential.[5] The Millennium Tower Association ("HOA")—the not-for-profit association responsible for the key building systems—was shut out, and the truth about the mounting problems was hidden, and stayed hidden, for many years.

4. For its part, Millennium Partners is an experienced New York-based real estate development conglomerate of individuals and entities that boasts of having developed more than 2,900 luxury condominiums, eight five-star hotels, including the 40-story Four Seasons near Moscone Center, two extended-stay luxury hotels, 1,200,000 square feet of office space, and 1,000,000 square feet of retail space, among other developments.[6] It claims to own and operate an impressive portfolio worth over $4 billion.[7] In other words, purchasers of Millennium Tower

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[3] *Id.*

[4] The March 17, 2010 Confidentiality Agreement replaced and superseded a February 26, 2010 agreement in its entirety, and the parties to the March 17, 2010 Confidentiality Agreement agreed that the "February 26, 2010 agreement shall have no further force and effect."

[5] Confidentiality Agreement between Millennium Partners and the TJPA (March 17, 2010).

[6] Millennium Partners, http://millenniumptrs.com/about-mp/ (last visited Mar. 28, 2017).

[7] *Id.*

units had every reason to believe that they were placing their faith in a developer with the resources and know-how to properly design and construct a building whose height was not a moving target. And, in addition to the residents who bought into the dream of a world-class property built to the highest standards, the other inhabitants of bustling SoMa reasonably trusted that the slender skyscraper towering above them was constructed responsibly.

5. Christopher Jeffries and his son Sean Jeffries directed and led the development of Millennium Tower. Christopher Jeffries is a founder of certain of the related Millennium Partner entities and retains the largest ownership interest in several of the entities.[8] Even with his vast holdings, Christopher Jeffries himself makes the final decisions about the Millennium Tower and speaks with authority about the causes of its sinking and tilting. Christopher Jeffries was the primary spokesperson for Millennium Partners at its September 20, 2016 press conference at City Hall, where he insisted that "[Millennium Partners] did this building the right way."[9] The co-founders of certain of the related Millennium Partners entities, Philip Aarons and Philip Lovett, also had significant involvement overseeing and managing the development of the Millennium Tower, but, as Mr. Aarons testified, "the final decisions at Millennium are made by Chris Jeffries."[10]

6. Other day-to-day responsibilities for the Millennium Tower's development fell to Sean Jeffries, leader of West Coast development for Millennium Partners and the entity that Millennium Partners created to oversee the project at 301 Mission Street—Mission Street Development. As part of a strategic nationwide push, Sean Jeffries had expanded the West Coast office to complete various projects valued at over a billion dollars, including the Millennium Tower.[11] Vice President John Luciano, whom Millennium Partners installed on the HOA board

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[8] Aug. 12, 2010 Philip Aarons Dep. 9:11-13 & 43:17-21, cited as Ex. 5 to Plaintiff's Notice of Filing Exhibits in Support of Plaintiffs' Responses to Defendants' Motions for Summary Judgment and Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-cv-22806-KMW, ECF No. 338-5.

[9] Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking,* Popular Mechs. (Oct. 24, 2016), http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/.

[10] Aug. 12, 2010 Philip Aarons Dep. 42:18-21, *supra* note 8.

[11] Kristine Carber, *The Feel-Good Developer*, Gentry Wealth (Summer 2012).

from 2009 to 2016, joined Sean Jeffries on the West Coast.

7. After the confidential exchange of documents over the Millennium Tower's worsening condition, both Sean Jeffries and John Luciano kept the alarming data regarding the Tower's sinking from the HOA and continued selling the condominium units to unsuspecting homeowners. This subterfuge went on for years as Millennium Partners, and specifically Sean Jeffries, kept receiving regular reports that the Millennium Tower was sinking and tilting but never shared those reports with the HOA.

8. Sean Jeffries, acting on behalf of Millennium Partners, helped to make sure that no other entity shared that information, either. The TJPA, for instance, had been granted certain easements to the Millennium Tower property, which the agency needed to proceed with its excavation activities. Sean Jeffries signed the original October 10, 2008 easement agreement as the authorized representative of Mission Street Development. After responsibility for the Millennium Tower transferred from Mission Street Development to the HOA, the easement agreement had to be updated in 2011 to reflect that change; the amendment required the TJPA to provide monitoring data, which would have included the building's sinking and tilting, to Mission Street Development and the HOA. Sean Jeffries signed the amended easement agreement and designated himself as the HOA's "authorized representative"—thereby intercepting the TJPA's data before it could ever reach the HOA members not employed by Millennium Partners.[12] On information and belief, the HOA alleges that Sean Jeffries was not an official member of the board of directors of the HOA at the time of signing and was not authorized by the HOA to sign or receive the monitoring data on behalf of the HOA.

9. Long after construction was complete and all units had been sold, Sean Jeffries continued to involve himself with the building's management and attend periodic HOA meetings. In early 2014, after the Tower had sunk over 13 inches, and residents noticed signs of sidewalk settlement, Sean Jeffries wrote to the HOA's president to propose quarterly meetings between the HOA and Millennium Partners. Sean Jeffries also agreed to provide updates on the adjoining

[12] At least two board members were residents not employed by Millennium Partners at the time the September 1, 2011 First Amendment to the Easement Agreement was signed.

TJPA construction site, where the Transit Center was still under construction, including substantial underground work to accommodate the extension of the Caltrain line and the future High Speed Rail project.

10. In a February 2014 update to the HOA, Sean Jeffries professed ignorance about the Tower's troubles: "I have not been made aware to date of any information that gives us concern for the safety of the building or any significant impact on the structure."[13] But Sean Jeffries was aware. He knew that the Tower was sinking and tilting (and had already sunk approximately 13 inches by that time), and he knew that excavation for the TJPA's underground "train box" and the associated construction were significantly impacting the Tower. Rather than alert those who had the most to lose, Sean Jeffries continued to hide this information from the HOA.

11. The TJPA and the private parties involved in the development of the Transit Center and the skyscraper across the street—the Transbay Tower, also known as the Salesforce Tower (the "Salesforce Tower")—likewise knew that their construction activities would affect the Millennium Tower and that its excavation activities alone would cause the Tower to sink further. As a condition of the easement permitting access to the Millennium Tower, the TJPA agreed that "[t]he Support System and the Transit Center shall be designed and constructed to stabilize the soil beneath the [property], prevent the material movement and/or settlement of the [property] and provide for the structural support, integrity and safety of the [property] during and after TJPA's construction of the Transit Center . . . ."[14]

12. But instead of preventing damage to the Millennium Tower, the construction of the Transit Center and the Salesforce Tower exacerbated the problems with the Millennium Tower. Both the TJPA's construction activities at the Transit Center and the construction activities at the Salesforce Tower, including dewatering, have led to increased sinking and tilting of the Millennium Tower. The TJPA's data shows that as demolition, dewatering, and other construction activities for the Transit Center and Salesforce Tower began, the rate of settlement

[13] Letter from Sean Jeffries (Millennium Partners) to Jeff Peters (HOA) (Feb. 28, 2014).

[14] October 10, 2008 Easement Agreement between the TJPA and Mission Street Development.

and tilting of the Tower increased. The construction activities at the Salesforce Tower have also contributed to one or more breaches of the shoring wall at the Transit Center site and inadequate performance of the shoring wall system at the Salesforce Tower site.

13. The TJPA and Salesforce Tower developers, through their massive, ill-planned construction operations, and Millennium Partners, with its defective design and construction, all contributed to the myriad problems plaguing the Millennium Tower. These problems were compounded by the active concealment by Millennium Partners and its employees, and the apparent complicity of the TJPA.

14. Other factors, including inadequate garage construction and waterproofing, defective windows, curtain wall corrosion and water intrusion, inter-unit odor transmission, cracks, and alignment issues, have also taken a toll on the livability of the Millennium Tower. Millennium Partners bills the property as "rare" and "an address like no other." And it is indeed rare and unique, but now mainly because failures of this magnitude in planning, design, development, and construction are almost unheard of in contemporary high rises.

15. Burdened with design and construction defects, and further battered by the TJPA construction activities on its land and the adjoining property, the Millennium Tower has continued its slow descent into the prehistoric clay on which it was built. Unable to initially detect the sinking and tilting on its own—and kept from the truth by the parties that did know—the HOA learned far too late of the conditions jeopardizing the Millennium Tower. Had it known sooner, the HOA could have demanded that the developer implement a retrofit, or it could have sought to halt other activities contributing to the damage, such as those of the TJPA.

16. Millennium Partners and the TJPA now each publically places unequivocal blame on the other. Regardless of who contributed most to the damage, one fact is indisputable: Both Millennium Partners and the TJPA possessed the damning data but did nothing with it. Neither tried to stem the sinking; neither sought to alert the HOA.

17. And now, in an attempt to show that adjoining construction sites are the exclusive cause of the sinking, Millennium Partners has sought an order to stop the TJPA from any final dewatering. Forced to confront its own culpability, Millennium Partners instead points the finger

at others, despite sitting on the data for years and never seeking to stop the dewatering when it would have made a difference.

18. The victims of this debacle are the residents and the HOA, who placed their trust and confidence—and over half a billion dollars—in the hands of Millennium Partners. With this Complaint for strict liability, breach of warranties, fraud, and negligence, as well as violations of the California Civil Code and California Business and Professions Code, among other claims, the HOA seeks what it plainly deserves—a safe home free from continued sinking and tilting, the same home that its members though they were buying before the truth was revealed.

II. THE PROPERTY

19. The Millennium Tower development is located at 301 Mission Street in San Francisco and comprises three primary structures: a 58-story tower (the "Tower"), an adjacent 12-story building on a reinforced concrete podium that includes residences and common areas (the "Podium"), and a five-level subterranean garage (the "Garage") (collectively, the Tower, the Podium, and the Garage constitute the "Millennium Tower" or "Property"). The Millennium Tower consists of 419 separate residential condominiums and two commercial units, forming a mixed-use condominium project.

20. The underlying real property is a rectangular lot measuring approximately 183.5 feet by 275 feet, a total area of approximately 50,463 square feet. The Property is bounded by Mission Street to the northwest, Fremont Street to the southwest, and Beale Street to the northeast. The future Transit Center abuts the Property to the southeast, and the temporary and permanent easements granted to the TJPA encroach five feet onto the Property on the southeast side. The Salesforce Tower is directly across Fremont Street from the Property at 415 Mission Street.

21. The Millennium Tower is more fully described in the Map entitled "Final Map 4146 A 420 Unit Residential Unit and 8 Commercial Unit Mixed Use Condominium Project" filed for record in the Official Records of the City and County of San Francisco, State of California, on May 15, 2008, in Book 105 of Condominium Maps, pages 146-147 (the "Center Map"), being Lot 19 of Assessor's Block 3719, to be developed as described on the

condominium plan entitled "A Mixed Use Condominium Plan for Millennium Tower – 301 Mission Street – San Francisco, California" filed for record in the Official Records of the City and County of San Francisco, State of California, on March 13, 2009, as Document Number 2009-I732547-00 in Reel J847, Image 0102, and more particularly, contains two Commercial Components and three Residential Components.

22. Under the governing documents, and pursuant to California law, the HOA is the owner of the common areas of the Millennium Tower, including but not limited to the land, foundations, footings, beams, supports, roofs, interior and exterior load-bearing walls, Garage, basement areas, exterior building surfaces, window walls, curtain walls, glazing, electrical rooms, sewer and drainage systems, and utility pipes and conduits. The HOA is responsible for the operation and administration of the common areas and the maintenance, repair, and replacement of all improvements within the common areas. The HOA has the sole and exclusive right to pursue claims and causes of action related to deficiencies in, and damage to, the common areas of the Millennium Tower.

III. THE PARTIES

23. Plaintiff HOA is a California nonprofit mutual benefit corporation formed and existing under the laws of the State of California and established as a common interest development, as described in California Civil Code sections 4080 and 5980, with its principal place of business within the County of San Francisco, California. The HOA represents the interests of the owners of condominium units and the sub-associations in this common-interest development.

24. By the express terms of the HOA's governing documents, and pursuant to California Civil Code section 5980, the HOA has the general authority and responsibility to bring this action in its own name as the real party in interest and without joining with it the members in matters pertaining to the Millennium Tower.

25. The HOA has the sole and exclusive right and duty to manage, operate, control, repair, replace, and restore the Millennium Tower, including the right to enter into contracts to accomplish its duties and obligations. It also has all the powers necessary to carry out its rights

and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the HOA when it deems such action necessary to enforce its powers, rights, and obligations, including the bringing of this action. Under California Civil Code sections 4775 and 5980, the HOA seeks recovery for damages to the Millennium Tower, including, among other things, damages to the common areas; damages to the separate interests that the HOA is obligated to maintain and repair; and damages to the separate interests within the HOA's common interest, power, and standing.

26. Defendant Mission Street Development LLC ("MSD") is a limited liability company formed and existing under the laws of the State of Delaware, and doing business in the City and County of San Francisco, California, including the development, construction, improvement, marketing, and sale of the Millennium Tower and its units.

27. Defendant Mission Street Holdings LLC ("MSH") is a limited liability company formed and existing under the laws of the State of Delaware, and doing business in the City and County of San Francisco, California, including the development, construction, improvement, marketing, and sale of the Millennium Tower and its units.

28. Defendant Millennium Partners Management LLC ("MPM") is a limited liability company formed and existing under the laws of the State of New York, and doing business in the City and County of San Francisco, California, including the development, construction, improvement, marketing, and sale of the Millennium Tower and its units. MPM was the "Assured" for a 2007 loss occurring at the Millennium Tower. On information and belief, the HOA alleges that MPM employees were also entitled to a discounted price on Millennium Tower units by virtue of MPM's involvement and affiliation with the development.

29. Defendant Millennium Partners LLC ("MP LLC") is a limited liability company formed and existing under the laws of the State of New York, and doing business in the City and County of San Francisco, California, including the development, construction, improvement, marketing, and sale of the Millennium Tower and its units. MP LLC served as a guarantor in connection with a loan provided to MSD in 2005, the purpose of which was to finance the construction of the Millennium Tower, for which it received payment from MSD. And pursuant

to the Millennium Tower Move In/Out Procedures, MP LLC is required to be listed as an additional insured on moving companies' liability insurance policies.

30. Defendant Millennium Partners I, Inc. ("MPI") is a corporation formed and existing under the laws of the State of New York, and doing business in California as New York SF Millennium Partners I, Inc., including the development, construction, improvement, marketing, and sale of the Millennium Tower and its units. MPI has been in the real estate development business since at least 1992.

31. Collectively, MSD, MSH, MPM, MP LLC, and MPI constitute the "Millennium Defendants." All of the Millennium Defendants are non-public entities about whom little to no financial information is publicly available. All of the Millennium Defendants were integral to the development of the Millennium Tower and profited from the development, construction, improvement, marketing, or sale of the Millennium Tower and its units.

32. Defendant Christopher M. Jeffries is a Founding Partner, Principal, and controlling shareholder of MPI. He is also the President of MSH, MPM, and MP LLC. On information and belief, Christopher Jeffries was at all times in control of the day-to-day management and operation of MSD with Philip Aarons and Philip Lovett, as required by the loan agreement that financed the construction of the Millennium Tower. He has been heavily involved in the development, management, and sale of the Millennium Tower and its units. In particular, he was a key participant in the decision to build the Tower with concrete instead of a steel frame, resulting in a significantly heavier building than original designs called for.

33. Defendant Philip E. Aarons is a Founding Partner, Principal, and shareholder of MPI. He is also Vice President and Secretary of MSH, Vice President of MPM, and Vice President of MP LLC. On information and belief, Philip Aarons was at all times in control of the day-to-day management and operation of MSD with Christopher Jeffries and Philip Lovett, as required by the loan agreement that financed the construction of the Millennium Tower. He has been heavily involved in the development, management, and sale of the Millennium Tower and its units.

34. Defendant Philip H. Lovett is a Founding Partner, Principal, and shareholder of

MPI. He is also Vice President of MSH, Vice President of MPM, and Vice President and Secretary of MP LLC. On information and belief, Philip Lovett was at all times in control of the day-to-day management and operation of MSD with Christopher Jeffries and Philip Aarons, as required by the loan agreement that financed the construction of the Millennium Tower. He has been heavily involved in the development, management, and or sale of the Millennium Tower and its units. In particular, he directed the Millennium Tower's condominium sales and services strategies and business plan for the project. He also participated in the design and layout of the Millennium Tower units.

35. Collectively, Christopher Jeffries, Aarons, and Lovett constitute the "Millennium Founders." Allegations directed at Millennium Partners, rather than any specific entity, apply to the conduct for which the specific Millennium Partners legal entity obscured its legal identity. In situations where the specific legal entity can be identified, the allegations are directed towards the specific legal entity as identified herein. For example, when Millennium Partners I, Inc. ("MPI") conducts business as "Millennium Partners, Inc." or "Millennium Partners," this complaint refers to the entity as MPI. On information and belief, at least some conduct taken in the name of "Millennium Partners" was undertaken on behalf of MPI. On information and belief, "Millennium Partners" failed to comply with the fictitious business name statutes, California Business and Professions Code section 17900 *et seq.*, thereby precluding parties such as the HOA from understanding the true identity or identities of the legal entities doing business under the name "Millennium Partners."

36. Defendant Sean Jeffries is Vice President of MSH and the authorized agent of MSD and MPM. Sean Jeffries signed the September 1, 2011 First Amendment to the Easement Agreement between the TJPA and the HOA, and was listed as the designated recipient of monitoring data from the TJPA regarding the sinking and tilting of the Tower. In this capacity but without authorization by the HOA, he volunteered and undertook to act on behalf of the HOA, effectively participating in HOA board meetings as if he were a member of the HOA's board, and thus owed a fiduciary duty to the HOA to keep them informed about any issues with the Millennium Tower. Sean Jeffries is a resident of San Francisco, California.

37. Defendant John Luciano is Vice President of MPM and was the Property Manager for Millennium Partners in relation to the Millennium Tower. He was also a member of the HOA's board from 2009 through 2016. Luciano was involved in the development, management, and sale of the Millennium Tower and its condominium units. As a representative of the entities with sole access to certain information about the Tower, Luciano owed a fiduciary duty to the HOA to keep the HOA informed about any issues with the Millennium Tower. John Luciano is a resident of San Francisco, California.

38. Defendant Webcor Construction LP ("Webcor"), is the survivor to a merger with Webcor Construction, Inc., and is a limited partnership formed under the laws of the State of California with its principal place of business in California and doing business as "Webcor Builders." Webcor Construction, Inc. was a corporation formed under the laws of the State of California, with its principal place of business in California, and also doing business as "Webcor Builders." Webcor entered into an Agreement for Construction Management Services with MSD to act as the general contractor for the Millennium Defendants in the construction of the Millennium Tower.

39. Defendant Handel Architects LLP ("Handel") is a limited liability partnership doing business in the City and County of San Francisco, California. Handel was the architect of record and designed the Millennium Tower and its components.

40. Defendant Treadwell & Rollo, Inc. ("Treadwell & Rollo") is a dissolved corporation that had its principal place of business in the City and County of San Francisco, California. Treadwell & Rollo was the geotechnical engineer of record for the Millennium Tower. Treadwell & Rollo was subsequently known as T & R Consolidated, Inc. Treadwell & Rollo sold its assets to Langan Engineering and Environmental Services, Inc. before dissolving.

41. Defendant Langan Engineering and Environmental Services, Inc. ("Langan") is a New Jersey corporation engaged in various geotechnical, environmental, and other engineering services, and is the successor in interest to Treadwell & Rollo, subsequently known as T & R Consolidated. Langan's liability as the successor in interest to Treadwell & Rollo is based on the following factual allegations:

a. All or substantially all of Treadwell & Rollo's assets were transferred to Langan pursuant to an Asset Purchase Agreement on November 1, 2010.

b. On information and belief, the HOA alleges that this asset transfer was not supported by adequate consideration.

c. Treadwell & Rollo legally changed its name to Treadwell & Rollo Consolidated, Inc. ("T & R Consolidated") after the asset purchase. T & R Consolidated subsequently dissolved and no longer exists as an operating entity.

d. Plans called for Treadwell & Rollo to maintain its name for an interim period, but be branded "A Langan Company." In 2012, it would become known as "Langan Engineering & Environmental Services."[15]

e. One or more individuals were officers, directors, or stockholders of both Treadwell & Rollo and Langan. Philip Tringale was President of Treadwell & Rollo, Inc., and currently is Director of Western Operations at Langan Engineering & Environmental Services. He represents that the start date for both positions was March 1992.[16]

f. Langan acquired all assets necessary to carry on Treadwell & Rollo's business, including its goodwill, books and records, licenses, trade accounts, and employees.

g. Langan continued to conduct business at Treadwell & Rollo's prior business address with substantially the same personnel Treadwell & Rollo employed, and the same general business operations that Treadwell & Rollo previously conducted.

h. Both Langan and Treadwell & Rollo publicly referred to the transaction as a merger between the two companies.

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[15] PR Newswire, *Langan Acquires Treadwell & Rollo* (Nov. 1, 2010), http://www.prnewswire.com/news-releases/langan-acquires-treadwell--rollo-106465148.html.

[16] Philip Tringale, LinkedIn, https://www.linkedin.com/in/philip-tringale-85b37711/.

i. Langan assumed the obligations of Treadwell & Rollo necessary for the continuation of Treadwell & Rollo's business obligations. Indeed, it continued on with Treadwell & Rollo's obligations at 301 Mission Street: From approximately 2012 through 2013, "Treadwell & Rollo: A Langan Company" produced memoranda to Millennium Partners evaluating Arup's settlement monitoring measurements. In 2014, "Langan Treadwell Rollo" continued with the same evaluation memoranda using the same template. And in December 2016, "Langan" continued the work Treadwell & Rollo had begun, presenting the results of building survey measurements in a Building Survey Report.

42. Defendant DeSimone Consulting Engineers LLC ("DeSimone") is a limited liability company organized under the laws of the State of Delaware and doing business in the City and County of San Francisco, California. DeSimone LLC acted as the structural engineer for the Millennium Defendants in connection with the design and construction of the Millennium Tower. DeSimone LLC filed a Cross-Complaint and an Answer admitting to providing structural engineering services at 301 Mission Street in the related matter, *Laura S. Lehman, et. al. v. Transbay Joint Powers Authority, et al.* DeSimone is also known as DeSimone Consulting Engineers, PLLC, and is also a professional limited liability company organized under the laws of the State of California and doing business in the City and County of San Francisco, California. DeSimone entered an Agreement for Structural Engineering Services to act as structural engineer for the Millennium Defendants in connection with the design and construction of the Millennium Tower.

43. Collectively, Treadwell & Rollo, Langan, and DeSimone are the "Engineering Defendants."

44. Defendant Transbay Joint Powers Authority ("TJPA") is a government joint powers entity created under California Government Code section 6500 *et seq.* with its principal office located at 201 Mission Street, Suite 2100, San Francisco, California 94105. The TJPA was created by a Joint Power Agreement dated April 2, 2001 between the City and County of

San Francisco, the Alameda-Contra Costa Transit District, and the Peninsula Corridor Joint Power Board. The TJPA is the entity charged with developing the Transbay Terminal, which includes construction of the five-story Transit Center and underground train facility directly adjacent to the Property.

45. Defendant Arup North America Ltd. ("Arup") is a corporation formed under the laws of the United Kingdom, and on information and belief has its principal place of business in California. Arup is a geotechnical engineering firm who was retained by the TJPA's architect, Pelli Clarke Pelli Architects, to provide geotechnical studies of the soil underlying, and foundation of, the Transbay Terminal Project, and to design a below-ground buttress pile wall on and adjacent to the Property.

46. Defendant Transbay Tower LLC is a limited liability company organized under the laws of the State of Delaware and conducting business within the State of California. Transbay Tower LLC is the owner and one of the developers of the Salesforce Tower, located at 415 Mission Street in San Francisco, California.

47. Defendant Boston Properties, Inc. is a corporation organized under the laws of the State of Delaware and conducting business within the State of California. On information and belief, Boston Properties, Inc. is a participant in, and exercises decision-making authority over, the development of the Salesforce Tower.

48. Defendant Clark-Hathaway Dinwiddie, A Joint Venture, is a joint venture formed by Clark Construction Group, LLC and Hathaway Dinwiddie Construction Company in connection with the construction of the Salesforce Tower. On information and belief, Clark-Hathaway was Transbay Tower LLC's general contractor responsible for managing the construction of the Salesforce Tower. Collectively, Transbay Tower LLC, Boston Properties, Inc., and Clark-Hathaway Dinwiddie constitute the "Salesforce Tower Defendants."

49. The HOA is ignorant of the true names and capacities of defendants sued as Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. The HOA will amend this Complaint to allege the true names and capacities of these defendants when ascertained. Each of the fictitiously named defendants is, or will be, responsible for the

occurrences alleged in this Complaint and for the HOA's injuries, both existing and prospective. Each Doe defendant legally and proximately caused damage to the HOA. Each and every Doe defendant had a duty to the HOA to use reasonable care in performing the tasks related to the planning, development, creation, improvement, design, construction, supervision, observation, inspection, management, and/or repair of the Millennium Tower.

IV. SECONDARY LIABILITY

A. Single Enterprise Liability

1. Millennium Defendants

50. The Millennium Defendants are all collectively secondarily liable as a single enterprise for the direct acts and omissions of each of their component entities—MSD, MSH, MPM, MP LLC, and MPI—alleged herein. Although there are technically five legal entities, "there is but one enterprise," and this enterprise "has been so handled that it should respond, as a whole, for the debts of certain component elements of it." *See Las Palmas Associates v. Las Palmas Center Associates*, 235 Cal. App. 3d 1220, 1248 (1991). Accordingly, the Court should construct, for purposes of imposing liability, an entity comprising the assets and liabilities of all the Millennium Defendants, and charge it with the liabilities of all the Millennium Defendants. *See id.* The Millennium Defendants' secondary liability as a single enterprise is based on at least the following factual allegations:

a. The use of each of the component entities of the Millennium Defendants as mere shells, instrumentalities, and conduits for a single purpose—the development of the Millennium Tower;

b. The use by each of the component entities of the Millennium Defendants of the same offices and business location;

c. The employment by each of the Millennium Defendants of the same employees and attorney;

d. The failure to adequately capitalize MSD, MSH, and MPM;

e. The disregard of legal formalities and the failure to maintain arm's length relationships among the Millennium Defendants;

f. The concealment of the identity of the specific responsible Millennium Defendants;

g. The use of component entities of the Millennium Defendants to shield against liability of other component Millennium Defendant entities;

h. The fact that adherence to the fiction of a separate corporate existence of each of the five Millennium Defendants would promote injustice under these circumstances; and

i. The fact that throughout the entire period of development, from the concept of the Millennium Tower development in the late 1990s to the sales and management extending from 2009 to 2016, the Millennium Defendants acted as a single enterprise and capitalized on the name recognition of that single enterprise to reap hundreds of millions of dollars in revenues. In dozens of official documents, the Millennium Defendants represented that the owner and developer of the Millennium Tower was "Millennium Partners" and acted as a single entity. The Millennium Defendants made this representation to the San Francisco city officials responsible for permitting the Millennium Tower and prospective and actual homeowners of the units in the Millennium Tower.

B. Alter Ego Liability

1. Millennium Partners

51. Christopher Jeffries is secondarily liable for the conduct of MSD, MSH, MPM, MP LLC, and MPI alleged herein because each of these five entities were and are the alter egos that Chris Jeffries used for the purpose of the Millennium Tower project. Each of MSD, MSH, MPM, MP LLC, and MPI were at all relevant times the alter egos of Chris Jeffries. A direct or indirect unity of interest and ownership existed between each of MSD, MSH, MPM, MP LLC, and MPI, on the one hand, and Chris Jeffries on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. Because the Millennium Defendants are all non-public entities, the full extent of Chris Jeffries' influence and control over all of the Millennium Entities is within the exclusive knowledge of Chris Jeffries. Chris Jeffries' alter ego

liability is based on at least the following factual allegations:

a. Christopher Jeffries directs and manages all Millennium Partners' projects, including all of the conduct with respect to the Millennium Tower undertaken by MSD, MSH, MPM, MP LLC, and MPI. This has been the case since he founded Millennium Partners and "set his sights on key gateway cities across the United States" for his new form of mixed-use developments.[17] His co-founder Aarons acknowledged as much, stating that Christopher Jeffries makes the "final decisions" at Millennium.[18] This is also specifically true as to the Millennium Tower: Christopher Jeffries took ownership of and defended the Tower on behalf of MPI at a September 20, 2016 press conference declaring: "We did this building the right way."[19]

b. Chris Jeffries' efforts to develop, construct, improve, market, and sell the Millennium Tower by using, dominating, and controlling MSD, MSH, MPM, MP LLC, and MPI allowed him, to effectuate the dream of developing "housing with a lifestyle" across the country.[20] In so doing, Chris Jeffries dominated and controlled the affairs of MSD, MSH, MPM, MP LLC, and MPI, using them as mere conduits for his worldwide real estate development pursuits.

c. Chris Jeffries profited from sales of condominium units in the Millennium Tower and benefitted from the success of the Millennium Tower in his other business ventures.

d. Chris Jeffries controlled and dominated MSD, MSH, MPM, MP LLC, and

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[17] Millennium Partners, http://millenniumptrs.com (last visited Mar. 28, 2017).

[18] Aug. 12, 2010 Philip Aarons Dep. 42:18-21, cited as Ex. 5 to Plaintiff's Notice of Filing Exhibits in Support of Plaintiffs' Responses to Defendants' Motions for Summary Judgment and Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-cv-22806-KMW, ECF No. 338-5.

[19] Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking,* Popular Mechs. (Oct. 24, 2016), http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/.

[20] Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post, Aug. 24, 1999.

MPI when making crucial decisions about the development, construction, and management of the Millennium Tower. For example, the residential layouts were the product of his vision. A memorandum enclosing a revised plan of the amenity level and mid-rise building layouts incorporated Chris Jeffries' comments.[21]

e. Chris Jeffries disregarded the formal distinctions between MSD, MSH, MPM, MP LLC, and MPI treating them as the same. For example, Chris Jeffries sent memoranda reviewing and suggesting changes to 301 Mission plans on "Millennium Partners" letterhead.[22] In addition, "Millennium Partners" was the recipient of invoices for construction and other professional services completed at the Millennium Tower by various firms.[23]

f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in the development of the Millennium Tower. On information and belief, Chris Jeffries was involved in this commingling of assets and diverted the income and assets of the various entities without regard to the corporate form.

g. Chris Jeffries shares his attorney with the Millennium Defendants.

h. Chris Jeffries has benefited from the development, construction, and sale of the Millennium Tower such that it would be unjust if he were to escape liability for obligations associated with these benefits by adhering to the fiction that MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, Chris Jeffries has benefited from his reputation as a national leader in luxury living. Without the "impressive portfolio across the nation," including the

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[21] Memorandum from Glenn Rescalvo to Phil Lovett, Richard Baumert, Sean Jeffries and Steve Patterson re Amenity Level/Mid-rise layouts (Sept. 21, 2005).

[22] Memorandum from Chris Jeffries to Mark Farrar, Sean Jeffries, Pamela Malkani & David Rothstein (May 20, 2002).

[23] J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010); McMillan Companies Invoice (May 6, 2010).

Millennium Tower San Francisco, Chris Jeffries could not have drawn on this powerful branding to advertise his latest project, the Millennium Tower in Boston.[24] Accolades include the San Francisco Chamber of Commerce's "Excellence in Business—Building San Francisco" Award, which was accepted by Managing Director Baumert.[25] In establishing a brand and a logo based on "Millennium Partners," which is identified with him personally, Chris Jeffries personally benefitted from the Millennium Tower and related projects. But in order to draw upon the power of this national brand, Chris Jeffries must be required to take responsibility for the flaws in his various developments.

52. Philip Aarons is secondarily liable for the conduct of MSD, MSH, MPM, MP LLC, and MPI alleged herein because each of these five entities were and are the alter egos that Aarons used for the purpose of the Millennium Tower project. Each of MSD, MSH, MPM, MP LLC, and MPI were at all relevant times the alter egos of Aarons. A direct or indirect unity of interest and ownership existed between each of MSD, MSH, MPM, MP LLC, and MPI, on the one hand, and Aarons on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. Because the Millennium Defendants are all non-public entities, the full extent of Aarons' influence and control over all of the Millennium Entities is within the exclusive knowledge of Aarons. Aarons' alter ego liability is based on at least the following factual allegations:

a. Aarons speaks and acts as a representative for and owner of Millennium Partners, including all of the conduct with respect to the Millennium Tower allegedly undertaken by MSD, MSH, MPM, MP LLC, and MPI. He too represented MPI at the September 2016 press conference. Aarons was involved in high-level strategic decisions about the Millennium Tower project in its early development

[24] Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), http://upscalelivingmag.com/millennium-boston-tower/.

[25] Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010),* http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards.

phases; for example, he joined Sean Jeffries to meet with potential designers and architects for the project in 2006. In 2003, when speaking to the planning commissioners for the City and County of San Francisco, Aarons stated in relation to the Millennium Tower "This project we are especially proud of." He is identified as an "Important MP [Person]" in the Millennium Tower Sales Manual.[26]

b. Aarons' efforts to develop, construct, improve, market, and sell the Millennium Tower by using, dominating, and controlling MSD, MSH, MPM, MP LLC, and MPI allowed him, to effectuate the dream of developing "housing with a lifestyle" across the country.[27] In so doing, Aarons dominated and controlled the affairs of MSD, MSH, MPM, MP LLC, and MPI, using them as mere conduits for his worldwide real estate development pursuits.

c. Aarons profited from sales of condominium units in the Millennium Tower and benefitted from the success of the Millennium Tower in his other business ventures.

d. Aarons controlled and dominated MSD, MSH, MPM, MP LLC, and MPI when making crucial decisions about the development, construction, and management of the Millennium Tower.

e. Aarons disregarded the formal distinctions between MSD, MSH, MPM, MP LLC, and MPI treating them as the same. For example, he received transmittals from Handel of Millennium Tower drawings and plans to "Millennium Partners New York."[28] In addition, "Millennium Partners" was the recipient of invoices for construction and other professional services

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[26] Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

[27] Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post, Aug. 24, 1999.

[28] *See, e.g.*, Handel Architects Transmittal to Rod Johnson & Phil Lovett (June 19, 2006).

completed at the Millennium Tower by various firms.[29] Steven Hood (an employee of Millennium Partners) and Sean Jeffries sent correspondence related to the Millennium Tower on behalf of the Millennium Defendants and on "Millennium Partners" letterhead.[30]

f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in the development of the Millennium Tower. Aarons was involved in this commingling of assets and diverted the income and assets of the various entities without regard to the corporate form.

g. Aarons shares his attorney with the Millennium Defendants.

h. Aarons has benefited from the development, construction, and sale of the Millennium Tower such that it would be unjust if he were to escape liability for obligations associated with these benefits by adhering to the fiction that MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, Aarons has benefited from Millennium Partners' reputation as a national leader in luxury living. Without the "impressive portfolio across the nation," including the Millennium Tower San Francisco, Aarons could not have drawn on this powerful branding to advertise his latest project, the Millennium Tower in Boston.[31] Accolades include the San Francisco Chamber of Commerce's "Excellence in Business—Building San Francisco" Award, which was accepted by Managing Director Baumert.[32] In establishing a brand and a logo based on "Millennium Partners," which is identified with him personally, Aarons personally benefitted

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[29] J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010); McMillan Companies Invoice (May 6, 2010).

[30] Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009). Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).

[31] Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), http://upscalelivingmag.com/millennium-boston-tower/.

[32] Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010),* http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards.

from the Millennium Tower and related projects. But in order to draw upon the power of this national brand, Aarons must be required to take responsibility for the flaws in his various developments.

53. Philip Lovett is secondarily liable for the conduct of MSD, MSH, MPM, MP LLC, and MPI alleged herein because each of these five entities were and are the alter egos that Lovett used for the purpose of the Millennium Tower project. Each of MSD, MSH, MPM, MP LLC, and MPI were at all relevant times the alter egos of Lovett. A direct or indirect unity of interest and ownership existed between each of MSD, MSH, MPM, MP LLC, and MPI, on the one hand, and Lovett on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. Because the Millennium Defendants are all non-public entities, the full extent of Lovett's influence and control over all of the Millennium Entities is within the exclusive knowledge of Lovett. Lovett's alter ego liability is based on at least the following factual allegations:

a. Lovett is responsible for the day-to-day operations and management of all Millennium Partners projects, including all of the conduct with respect to the Millennium Tower allegedly undertaken by MSD, MSH, MPM, MP LLC, and MPI.[33] Accordingly, he is listed as an emergency contact in the Millennium Tower Sales Manual[34] and was involved in communications regarding the budgets for each of the Millennium Tower constituent residences.[35] He also closely supervised the minutiae of building design decisions from the unit finishes to the waterproofing of the garage. Lovett exercised control over several of the Millennium Partners entities as Vice President of MSH (which is the sole member of MSD) and signed legal documents on behalf of MSD.

b. Lovett's efforts to develop, construct, improve, market, and sell the Millennium

[33] Millennium Partners, http://millenniumptrs.com (last visited March 28, 2017).

[34] Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

[35] Email from David Goben to Stephanie Kay-Foss regarding Preliminary Budget Comments (Feb. 28, 2013).

Tower by using, dominating, and controlling MSD, MSH, MPM, MP LLC, and MPI allowed him, to effectuate the dream of developing "housing with a lifestyle" across the country.[36] In so doing, Lovett dominated and controlled the affairs of MSD, MSH, MPM, MP LLC, and MPI, using them as mere conduits for his worldwide real estate development pursuits.

c. Lovett profited from sales of condominium units in the Millennium Tower and benefitted from the success of the Millennium Tower in his other business ventures.

d. Lovett controlled and dominated MSD, MSH, MPM, MP LLC, and MPI when making crucial decisions about the development, construction, and management of the Millennium Tower.

e. Lovett disregarded the formal distinctions between MSD, MSH, MPM, MP LLC, and MPI treating them as the same. For example, "Millennium Partners" was the recipient of invoices for construction and other professional services completed at the Millennium Tower by various firms.[37] Steven Hood (an employee of Millennium Partners) and Sean Jeffries sent correspondence related to the Millennium Tower on behalf of the Millennium Defendants and on "Millennium Partners" letterhead. [38][39]

f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in the development of the Millennium Tower. Lovett was involved in this commingling of assets and diverted the income and assets of the various entities without regard to the corporate form.

g. Lovett shares his attorney with the Millennium Defendants.

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[36] Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post, Aug. 24, 1999.

[37] J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010); McMillan Companies Invoice (May 6, 2010).

[38] Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009).

[39] Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).

h. Lovett has benefited from the development, construction, and sale of the Millennium Tower such that it would be unjust if he were to escape liability for obligations associated with these benefits by adhering to the fiction that MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, Lovett has benefited from Millennium Partners' reputation as a national leader in luxury living. Without the "impressive portfolio across the nation," including the Millennium Tower San Francisco, Lovett could not have drawn on this powerful branding to advertise their latest project, the Millennium Tower in Boston.[40] Accolades include the San Francisco Chamber of Commerce's "Excellence in Business—Building San Francisco" Award, which was accepted by Managing Director Baumert.[41] In establishing a brand and a logo based on "Millennium Partners," which is identified with him personally, Lovett personally benefitted from the Millennium Tower and related projects. But in order to draw upon the power of this national brand, Lovett must be required to take responsibility for the flaws in his various developments.

2. Millennium Defendants

54. As an alternative to the theory of single enterprise liability alleged against the Millennium Defendants alleged in section IV.A.1 *supra*, the HOA alleges that the Millennium Defendants are secondarily liable based on the following alter ego theory of secondary liability.

55. MPI is liable for the conduct of MSD, MSH, MPM, and MP LLC alleged herein because each of these four entities were and are the alter egos that MPI used for the purpose of the Millennium Tower project. Each of MSD, MSH, MPM, and MP LLC were at all relevant times the alter egos of MPI, because a unity of interest and ownership existed between each of

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[40] Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), http://upscalelivingmag.com/millennium-boston-tower/.

[41] Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010),* http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards.

MSD, MSH, MPM, MP LLC, on the one hand, and MPI on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MPI's alter ego liability is based on at least the following factual allegations:

a. MSD, MSH, MPM, and MP LLC existed as mere conduits or shell corporations for the interests and manipulations of MPI.

b. MPI dominated and controlled the affairs of MSD, MSH, MPM and MP LLC, using them as mere conduits for its worldwide real estate development pursuits.

c. MPI profited from sales of condominium units in the Millennium Tower and benefitted from the success of the Millennium Tower in its other business ventures.

d. MPI controlled and dominated MSD, MSH, MPM, and MP LLC and made crucial decisions about the development, construction, and management of the Millennium Tower.

e. MPI disregarded the formal distinctions between MSD, MSH, MPM, and MP LLC, treating them as the same.

f. MSD, MSH, MPM, MP LLC, and MPI all share a business address at 1995 Broadway, New York, New York. MSD, MSH, MPM, MP LLC, and MPI also share a common website and use a common logo and brand.

g. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in the development of the Millennium Tower. MPI was involved in this commingling of assets and diverted the income and assets of the various entities without regard to the corporate form.

h. MSD, MSH, MPM, MP LLC, and MPI share employees and executives. For instance, Richard Baumert, identified as a Managing Partner of Millennium Boston on the Millennium Partners website,[42] also signed the First Addendum to the Residential Purchase Agreement as Vice-President of Mission Street

[42] Millennium Partners, http://millenniumptrs.com (last visited March 28, 2017).

Holdings, LLC.[43] Other correspondence identifies him as an employee of Millennium Partners LLC.[44] The overlapping structure of employment and control confused business associates as well: Steven Hood is sometimes addressed as affiliated with "Millennium Partners" and other times with "Mission Street Development."[45] MPI's officers and shareholders themselves work for and have various positions at MSD, MSH, MPM, and MP LLC.

i. MSD, MSH, MPM, MP LLC, and MPI also share attorneys. In this action and other litigation relating to the sinking and tilting of the Millennium Tower, Peter Meier and Paul Hastings LLP represent MPI, MSD, MSH, MP LLC, MPM, the Millennium Founders, Sean Jeffries, and John Luciano.

j. MSD, MSH, MPM, and MP LLC were and are undercapitalized and potentially incapable of satisfying a judgment should the HOA prevail in this action. In particular, on information and belief, none of MSD, MSH, MPM, or MP LLC has sufficient assets or is insured sufficiently to cover the HOA's alleged damages.

k. MPI has benefited from the development, construction, and sale of the Millennium Tower; it would be unjust if it were to escape liability for obligations associated with these benefits by adhering to the fiction that MSD, MSH, MPM, and MP LLC each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, MPI has benefited from its reputation as national leaders in luxury living. Without its "impressive portfolio across the nation," including the Millennium Tower San Francisco, MPI could not have drawn on this powerful branding to

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[43] First Addendum to the Residential Purchase Agreement (March 20, 2012) (for Buyers Richard and Jo-Tung Tu Chang).

[44] Letter from Shirley Cui to Richard Baumert (Oct. 27, 2009).

[45] Letter from Brian Dykes (TJPA) to Steven Hood (Mission Street Development) (Jan. 8, 2013); Letter from Ramin Golesorkhi and Joseph E. Romano (Langan Treadwell Rollo) to Steven Hood (Millennium Partners) (Sept. 6, 2016).

advertise its latest project, the Millennium Tower in Boston.[46] Accolades include the San Francisco Chamber of Commerce's "Excellence in Business—Building San Francisco" Award, which was accepted by Managing Director Baumert.[47] In establishing a brand and a logo based on "Millennium Partners," MPI benefitted from the Millennium Tower and related projects.

56. Alternatively, MSH is liable for the conduct of MSD alleged herein because MSD was and is the alter ego that MSH used for the purpose of the Millennium Tower project. MSD was at all relevant times the alter ego of MSH. A unity of interest and ownership existed between each MSD and MSH adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MSH's alter ego liability is based on at least the following factual allegations: MSH dominated and controlled MSD; MSH directly owns at least some of MSD's stock; MSD was a mere shell and conduit for MSH's affairs, MSD was inadequately capitalized; MSD failed to abide by the formalities of the corporate existence; recognizing the separate existence of MSD would promote injustice under the circumstances.

57. Alternatively, MP LLC is liable for the conduct of MSD, MSH and MPM alleged herein because each of these three entities were and are the alter egos that MP LLC used for the purpose of the Millennium Tower project. Each of MSD, MSH, and MPM were at all relevant times the alter egos of MP LLC, because a unity of interest and ownership existed between each of MSD, MSH, MPM, on the one hand, and MP LLC, on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MP LLC's alter ego liability is based on at least the following factual allegations: MP LLC dominated and controlled MSD, MSH and MPM; MP LLC indirectly owns a least some of MSD, MSH and MPM's stock; MSD, MSH and MPM were mere shells and conduits for MP LLC's affairs; MSD, MSH and MPM were inadequately capitalized; MSD, MSH and MPM

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[46] Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), http://upscalelivingmag.com/millennium-boston-tower/.

[47] Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010),* http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards.

failed to abide by the formalities of the corporate existence; and recognizing the separate existence of MSD, MSH and MPM would promote injustice under the circumstances.

58. Alternatively, MPM is liable for the conduct of MSD and MSH alleged herein because each of these entities were and are the alter egos that MPM used for the purpose of the Millennium Tower project. Both MSD and MSH, were at all relevant times the alter egos of MPM, because a unity of interest and ownership existed between each of MSD and MSH, on the one hand, and MPM, on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MPM's alter ego liability of the is based on at least the following factual allegations: MPM dominated and controlled MSD and MSH; MPM indirectly owns at least some of MSD and MSH's stock; MSD, and MSH were mere shells and conduits for MPM's affairs; MSD and MSH were inadequately capitalized; MSD and MSH failed to abide by the formalities of the corporate existence; and recognizing the separate existence of MSD and MSH would promote injustice under the circumstances.

C. Principal Agent Liability

1. Millennium Defendants

59. As an alternative to the theories of single enterprise and alter ego liability alleged in sections IV.A.1 and IV.B.2 *supra*, the HOA alleges that the Millennium Defendants are secondarily liable based on the following principal-agent theory of secondary liability.

60. MPI was the principal and MSD was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MPI represented that MSD would act for MPI in connection with MSD's activities developing the Millennium Tower by allowing MSD to take actions on behalf of MP or Millennium Partners, both of which were used to refer to MPI. MPI so controlled MSD as to cause MSD to become merely the agent of MPI. MPI had the right to control and supervise the activities of MSD with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSD with respect to the development of the Millennium Tower. MSD accepted that it would be the agent of MPI and understood that it would be controlled by MPI for the purpose of the Millennium Tower's development. The scope of MPI's atypical control over MSD is demonstrated by the factual

allegations in paragraph 55, *supra*.

61. MPI was the principal and MSH was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MPI represented that MSH would act for MPI in connection with MSH's activities developing the Millennium Tower by allowing MSH to take actions on behalf of MP of Millennium Partners, both of which refer to MPI. MPI so controlled MSH as to cause MSH to become merely the agent of MPI. MPI had the right to control and supervise the activities of MSH with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSH with respect to the development of the Millennium Tower. MSH accepted that it would be the agent of MPI and understood that it would be controlled by MPI for the purpose of the Millennium Tower's development. The scope of MPI's atypical control over MSH is demonstrated by the factual allegations in paragraph 55, *supra*.

62. MPI was the principal and MP LLC was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MPI represented that MP LLC would act for MPI in connection with MP LLC's activities developing the Millennium Tower by allowing MP LLC to take actions on behalf of MP of Millennium Partners, both of which refer to MPI. MPI so controlled MP LLC as to cause MP LLC to become merely the agent of MPI. MPI had the right to control and supervise the activities of MP LLC with respect to the development of the Millennium Tower, including control over the day-to-day operations of MP LLC with respect to the development of the Millennium Tower. MP LLC accepted that it would be the agent of MPI and understood that it would be controlled by MPI for the purpose of the Millennium Tower's development. The scope of MPI's atypical control over MP LLC is demonstrated by the factual allegations in paragraph 55, *supra*.

63. MPI was the principal and MPM was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MPI represented that MPM would act for MPI in connection with MPM's activities developing the Millennium Tower by allowed MPM to take actions on behalf of MP of Millennium Partners, both of which refer to MPI. MPI so controlled MPM as to cause MPM to become merely the agent of MPI. MPI had the right to

control and supervise the activities of MPM with respect to the development of the Millennium Tower, including control over the day-to-day operations of MPM with respect to the development of the Millennium Tower. MPM accepted that it would be the agent of MPI and understood that it would be controlled by MPI for the purpose of the Millennium Tower's development. The scope of MPI's atypical control over MPM is demonstrated by the factual allegations in paragraph 55, *supra*.

64. Alternatively, MP LLC was the principal and MSD was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MP LLC so controlled MSD as to cause MSD to become merely the agent of MP LLC. MP LLC had the right to control and supervise the activities of MSD with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSD with respect to the development of the Millennium Tower. The scope of MP LLC's atypical control over MSD is demonstrated by the factual allegations in paragraph 57, *supra*.

65. Alternatively, MP LLC was the principal and MSH was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MP LLC so controlled MSH as to cause MSH to become merely the agent of MP LLC. MP LLC had the right to control and supervise the activities of MSH with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSH with respect to the development of the Millennium Tower. The scope of MP LLC's atypical control over MSH is demonstrated by the factual allegations in paragraph 57, *supra*.

66. Alternatively, MP LLC was the principal and MPM was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MP LLC so controlled MPM as to cause MPM to become merely the agent of MP LLC. MP LLC had the right to control and supervise the activities of MPM with respect to the development of the Millennium Tower, including control over the day-to-day operations of MPM with respect to the development of the Millennium Tower. The scope of MP LLC's atypical control over MPM is demonstrated by the factual allegations in paragraph 57, *supra*.

67. Alternatively, MPM was the principal and MSD was the agent in a principal-

agent relationship with respect to the development of the Millennium Tower. MPM so controlled MSD as to cause MSD to become merely the agent of MPM. MPM had the right to control and supervise the activities of MSD with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSD with respect to the development of the Millennium Tower. The scope of MPM's atypical control over MSD is demonstrated by the factual allegations in paragraph 58, *supra*.

68. Alternatively, MPM was the principal and MSH was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MPM so controlled MSH as to cause MSH to become merely the agent of MPM. MPM had the right to control and supervise the activities of MSH with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSH with respect to the development of the Millennium Tower. The scope of MPM's atypical control over MSH is demonstrated by the factual allegations in paragraph 58, *supra*.

69. Alternatively, MSH was the principal and MSD was the agent in a principal-agent relationship with respect to the development of the Millennium Tower. MSH so controlled MSD as to cause MSD to become merely the agent of MSH. MSH had the right to control and supervise the activities of MSD with respect to the development of the Millennium Tower, including control over the day-to-day operations of MSD with respect to the development of the Millennium Tower. The scope of MSH's atypical control over MSD is demonstrated by the factual allegations in paragraph 56, *supra*.

V. JURISDICTION AND VENUE

70. Jurisdiction over this action in the Superior Court of the State of California in and for the County of San Francisco is proper pursuant to California Code of Civil Procedure section 410.10 because all Defendants have sufficient minimum contacts with California to support the exercise of jurisdiction.

71. Venue is proper in the Superior Court of the State of California pursuant to California Code of Civil Procedure section 392 because the real property that is the subject of the action is located in the City and County of San Francisco. Venue is also proper pursuant to

California Code of Civil Procedure section 395.5 because this is the county where some Defendants reside, and pursuant to California Code of Civil Procedure section 395.5 because this county is where the corporate defendant entities' relevant contracts were entered into and performed, and where the relevant obligations and liabilities arose.

VI. EASEMENT AGREEMENTS AND FEIR

72. The TJPA owns real property adjacent to the Property and is in the process of building a new transit terminal that will include an above-ground bus station and a below-ground rail station. It entered into an Easement Agreement with MSD on October 10, 2008, which was authorized by the TJPA Board of Directors on October 17, 2008, and recorded in the official records of the City and County of San Francisco on March 25, 2009, Document no. 2009-I739852-00 (the "Easement Agreement").

73. The TJPA then entered into the First Amendment to the Easement Agreement with MSD and the HOA on September 1, 2011, which was recorded in the official records of the City and County of San Francisco on November 3, 2011, Document no. 2011-J296169-00 (the "Amended Easement Amendment").

74. Under the terms of the Easement Agreement, at Section II.A.1(a), the TJPA covenanted and agreed to design and construct the Support System (lateral and subjacent support for the Property) and the Transit Center to stabilize the soil beneath the Millennium Tower, prevent the material movement and/or settlement of the Millennium Tower, and provide for the structural support, integrity, and safety of the Millennium Tower during and after the TJPA's construction of the Transit Center.

75. The TJPA, at Section II.A.1.(b) of the Easement Agreement, agreed that it has the full, complete, and exclusive responsibility for the support, integrity, and safety of the Millennium Tower to the extent the Millennium Tower is affected by the construction of the Transit Center and Support System.

76. Under Section II.B.1(h) of the Easement Agreement, the TJPA agreed to repair, at its own cost and expense, or pay the reasonable cost of repairing, any damage to the Millennium Tower substantially caused by the TJPA's construction activities. The TJPA specifically

acknowledged that its obligation to repair damage to the Millennium Tower substantially caused by the TJPA's construction activities is not dependent on the existence of fault or negligence on the TJPA's part. In particular, but not exclusively, the TJPA agreed to repair damage to waterproofing or cracks in the foundations or walls of the Millennium Tower resulting from settlement or movement substantially caused by its construction activities.

77. Pursuant to the California Environmental Quality Act ("CEQA") and in light of the size and scope of the Transit Center, a Final Environmental Impact Report ("FEIR") was prepared for the Transit Center in 2004.

78. As lead agency for the Transit Center under CEQA, TJPA prepared and subsequently certified the FEIR.

79. On April 22, 2004, TJPA adopted its Resolution No. 04-004, approving the Transit Center and adopting CEQA findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program for the Transit Center under CEQA. As required by CEQA, TJPA found that the Mitigation Monitoring and Reporting Program set forth enforceable mitigation measures, the implementation of which would reduce or avoid potentially significant environmental consequences of the Transit Center.

80. TJPA has subsequently adopted several addenda to the FEIR, determining in each case that modifications to the Transit Center would not require subsequent environmental review and would not require major revisions to the FEIR.

81. On information and belief, TJPA incorporated the Mitigation Measures as enforceable components of the Transit Center Project in its Resolution No. 04-004, as required under CEQA.

82. The substantive undertakings and obligations of the mitigation measures required for the Transit Center, specifically Mitigation Measure SG 1, required TJPA to "[m]onitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement." Mitigation Monitoring and Reporting Program, Rev. 1, 29 NOV07 at Mitigation Measure SG 1. The Mitigation Monitoring and Reporting Program requires TJPA to enforce such monitoring and corrective action by requiring the same to be included in contract

documents and to "inspect contractors' activities to ensure compliance." *Id.*

83. Similarly, in Mitigation Measure SG 4, TJPA undertook to "[u]nderpin … to protect existing structures from potential damage that could result from excessive ground movements during construction." *Id.* at Mitigation Measure SG 4.

84. In Mitigation Measure SG 5, TJPA undertook to "assure proper design and construction of pile-supported foundations for structures to control potential settlement of the surface." Mitigation Measure SG 5 also stated that "[s]tability of excavations and resultant impacts on adjacent structures can be controlled within tolerable limits by proper design and implementation of the excavation shoring systems." *Id.* at Mitigation Measure SG 5.

85. After it began construction of the Transit Center, TJPA—through Arup—detected movement of the Tower that exceeded both "action trigger levels" and the "maximum allowable movement" that TJPA was required to set and which it promised not to exceed, but TJPA ignored its obligations under the FEIR and related construction specifications, refusing to take any action to control the movement of the Tower, and to prevent resulting impacts on the Tower. Instead, TJPA continued with the construction activities that, on information and belief, it knew and knows now are causing movement of the Tower.

86. The undertakings and obligations of the Mitigation Measures and the Mitigation Monitoring Report Program were officially recognized and relied upon by TJPA to ostensibly and allegedly avoid causing significant environmental impacts in connection with construction of the Transit Center. When TJPA undertook those obligations, it was aware of the Tower's plans and designs.

87. TJPA has not completed construction of the Transit Center, and its obligations to comply with the Mitigation Measures are continuing obligations.

88. Despite the mandate to implement and enforce CEQA mitigation measures, no enforcement obligations have been undertaken to date by TJPA to effectively avoid the significant impacts identified in the FEIR. To the contrary, TJPA has breached its obligations under the FEIR.

89. The HOA is the successor in interest to MSD under the Easement Agreement. On

or about August 23, 2016, the HOA gave notice to the TJPA of the HOA's claims against the TJPA for damages to the extent required under Government Code section 910 *et seq.* The TJPA denied the HOA's claims on or about October 7, 2016.

VII. THE DEFECTS

90. The Tower was constructed on an inadequate foundation system and has experienced vertical displacement of over 16 inches. The Tower has settled differentially and is it out of plumb by over 12 inches. The Property also suffers from other defects, including inadequate garage construction and waterproofing, defective windows, curtain wall corrosion and water intrusion, inter-unit odor transmission, cracks, and alignment issues.

91. The following list of defects as defined in the California Civil Code is preliminary and nonexclusive and, therefore, is given without prejudice to the HOA's right to expand, amend, modify, or augment its claims and/or list of defects at any time, and the HOA specifically reserves its right to do so herein:

a. Civil Code § 896(a)(2): Water intrusion through windows and their systems and assemblies, including without limitation assemblies, thresholds, framing, substrate, flashings and trim, if any, or their designed or actual moisture barriers, including without limitation, internal barriers within the systems themselves. Such deficiencies have led to water intrusion into framing cavities and/or unit interiors, causing degradation of materials.

b. Civil Code § 896(a)(7): Water intrusion through foundation system and slabs. The deficiencies have led to water intrusion into adjacent systems, including the Garage and basement areas in the Tower and Podium, causing staining and degradation of materials.

c. Civil Code § 896(a)(14): Plumbing systems leak. These deficiencies have led to water intrusion, staining, corrosion, and efflorescence, and degradation of other building components.

d. Civil Code § 896(b)(1): Foundations, load-bearing walls, and slabs are experiencing vertical and horizontal displacement due to underlying soil

settlement and inadequate foundation support, resulting in damage to Garage walls, foundation walls, plumbing lines, sidewalks, and other component parts of the Property. The foundations of the Tower and Podium are experiencing settlement at a rate and depth well beyond the design parameters, resulting in actual or potential cracking of walls, pipes, joints, sidewalks, and other elements of the Property, water intrusion, and improper sewer pipe flows.

e. Civil Code § 896(b)(2): Foundations, load-bearing walls, and slabs contain significant vertical and horizontal displacement that has the potential to cause the Property to be structurally unsafe. The foundations of the Tower and Podium are experiencing settlement at a rate and depth well beyond the design parameters, resulting in differential settlement of the Tower and Podium structures.

f. Civil Code § 896(c)(1): Soils and engineered foundation walls are causing significant vertical and horizontal displacement of the Tower, Podium, and Garage structures due to underlying soil settlement and/or inadequate foundation support, resulting in damage to garage walls, foundation walls, plumbing lines, and other component parts. The soil underlying the Property is experiencing settlement at a rate and depth well beyond the design parameters, resulting in cracking and water intrusion in the walls and on the lower floor of the Garage, and spalling (or scaling) of the concrete therein. In the Garage there is water intrusion through subgrade walls and the lower-level garage floor surface, and cracking and spalling of subgrade walls. In the Tower there is water intrusion through subgrade walls.

g. Civil Code § 896(c)(3): Soil settlement under the Millennium Tower is causing the land to become potentially unusable for its common purpose.

h. Civil Code § 896(g)(2): Cracks and separations have developed in the exterior wall finishes. The exterior curtain wall is leaking.

i. Civil Code § 896(g)(3)(A): Manufactured window components have been

improperly manufactured and/or installed so as to interfere with their useful life. In particular, window stay arms do not operate properly and are failing.

j. Civil Code § 896(g)(6): There is unreasonable noise and odor transmission between units.

j. Civil Code § 896(g)(15): The foregoing deficiencies violate the standard that structures shall not be constructed in a manner that potentially impairs their occupants' safety.

k. Civil Code § 897: The foregoing deficiencies violate the standard that other deficiencies are actionable if they are the cause of damage.

A. Compliance with RORA

92. On or about August 12, 2016, the HOA provided notice to the Millennium Defendants and Webcor of the HOA's claim under California Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.* for damages arising out of, or related to, deficiencies in the development, design, specifications, planning, supervision, testing, observation of construction, and construction of the Property. The notice tolled all applicable statutes of limitation and repose, whether in contract, statute, or decisional law, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity, consistent with California Civil Code section 6000, section 895 *et seq.*, and section 910 *et seq.* (and including Civil Code section 927). Since that date, the HOA, Millennium Defendants, Webcor, and certain others have been engaged in the dispute resolution process identified in the statutes above.

93. The HOA complied with all pre-litigation procedures required under the Right to Repair Action ("RORA"), California Civil Code sections 895 *et seq.*, with respect to all defendants who the HOA alleges are "builders" pursuant to RORA section 911, which includes all of the Millennium Defendants. The document providing notice was transmitted to counsel representing the Millennium Defendants and Webcor on or about August 12, 2016 and provided adequate notice (actual or constructive) of the HOA's claims under California Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.* to the Millennium Defendants and Webcor.

94. The HOA's compliance with the prelitigation requirements of RORA was effective as to all Millennium Defendants because:

a. The HOA provided actual notice to counsel for the Millennium Defendants and complied with all other RORA prelitigation requirements under California Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.*

b. Alternatively, the HOA substantially complied with all of the pre-litigation requirements of RORA for all of the Millennium Defendants. The HOA's notice and the subsequent prelitigation process provided all of the Millennium Defendants with an opportunity to repair the Millennium Tower, and did not prejudice the rights of any of the Millennium Defendants under RORA.

c. Alternatively, the HOA's compliance with all of the pre-litigation requirements of RORA was constructive as to the Millennium Defendants except MSD (for which compliance is undisputed) because MSD is the alter ego of each of MSH, MPM, MP LLC, and MPI and notice to the alter ego provided notice to the controlling entities.

d. Alternatively, the HOA's compliance with all of the pre-litigation requirements of RORA is deemed satisfied because the Millennium Defendants concealed the true identities of certain entities considered "builders" under RORA and led the HOA to believe that MSD was the only "builder" under RORA. At the time the pre-litigation notice was provided to counsel for all Millennium Defendants, the HOA was unaware of the true identities of all of the "builders" under RORA but still provided actual written notice to the attorneys representing all Millennium Defendants. Subsequently, in preparing to file this lawsuit, the HOA conducted further investigations and learned the true identities of parties that are also "builders" under RORA and named those entities in the

complaint.

e. Alternatively, requiring further notice or prelitigation procedures under RORA by the HOA would be futile and would not serve the object and purpose of RORA because MSH, MPM, MP LLC and MPI all contend that they do not meet the definition of "builders," who are the only entities entitled to the protections of the prelitigation procedures.

95. Alternatively, the HOA is released from the requirements of the prelitigation procedures of RORA as to MSH, MPM, MP LLC, and MPI pursuant to civil code section 911 of RORA because the name and address of the agent for notice for each of MSH, MPM, MP LLC, and MPI was not included in the original sales documentation or provided to the Secretary of State.

96. California civil code section 911(e) states: "[a] builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative."

97. California civil code section 911(i) states: "[a]ny builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action."

98. At least because MSH, MPM, MP LLC, and MPI are "builders" under RORA who failed to comply with the requirements of section 911(e) "the [HOA] is released from the requirements of [the RORA pre-litigation procedures] and may proceed with the filing of an action . . ." under section 911(i).

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California Civil Code § 895 *et seq.* Against the Millennium Defendants (all directly liable and, alternatively, secondarily liable based on theories described in §IV), Millennium Founders (all secondary liable based on theories described in §IV), Webcor (directly liable), Handel (directly liable), the Engineering Defendants (all directly liable except Langan, whose liability is based on being the successor to Treadwell & Rollo), and Does 1 Through 100, Inclusive

99. The HOA re-alleges and incorporates by reference Paragraphs 1 through 98 above as if fully set forth herein.

A. Direct Liability

100. Each of the five Millennium Defendants—MSD, MSH, MPM, MP LLC, and MPI, qualify as "builders" according to the definition provided in section 911(a) of RORA because each entity was in the business of selling residential units in the Tower to the public at the time of the sales of the Millennium Tower's units or, in the alternative, was in the business of building, developing, or constructing the residential units in the Millennium Tower for public purchase. For example, MSD was a builder because it sold certain of the Tower's residential units to the public. MPI was a builder because it was involved in the business of developing the Tower's residential units through its marketing efforts on the Millennium Partners website, its participation in the site selection process, its participation in the structural engineering process, and its participation in various other design and engineering efforts. MPM was a builder because it was in the business of developing the Tower's residential units through its efforts to sell various units in the Tower and its participation in the landscaping design process. MP LLC and MSH were builders because they were in the business of developing the Tower's residential units through their efforts to manage the activities of their agents, including the Millennium Founders, relating to the development of the Millennium Tower. MSH was also a builder because it participated in the selection of the finishes for the units in the Millennium Tower and managed the process of selling the Tower's units.

101. All of the Millennium Defendants, Webcor, Handel, and the Engineering Defendants were under a statutory obligation to design, develop, and/or construct the Millennium Tower in conformance with all applicable building codes and standards, including but not limited to California Civil Code section 895 *et seq.*

102. All of the Millennium Defendants failed to develop the Millennium Tower in conformance with the standard of California Civil Code section 895 *et seq.*, specifically the functionality standard set forth in California Civil Code sections 896 and 897.

103. Webcor, Handel, and the Engineering Defendants also failed to design and/or construct the Millennium Tower in conformance with the standard of California Civil Code section 895 *et seq.*, specifically the functionality standard set forth in California Civil Code sections 896 and 897.

104. Webcor, Handel and the Engineering Defendants caused, either in whole or in part, the failure to design, develop, and/or construct the Millennium Tower in conformance with the standards of Civil Code section 895 *et seq.*, as a result of their negligent acts and omissions, as described *infra*.

105. The HOA seeks damages for the reasonable value of repairing any violation of the standards found under California Civil Code section 895 *et seq.*; reasonable costs of repairing any damages caused by repair efforts; reasonable costs of repairing and rectifying any damages resulting from the failure of the Millennium Tower to meet the section 895 standards; reasonable costs of removing and replacing any improper repair; reasonable relocation and storage expenses; and reasonable investigative costs for each established violation of the section 895 standards.

B. Secondary Liability

106. Alternatively, the Millennium Defendants are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

107. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

108. Langan is secondarily liable for this cause of action pursuant to the theory

described in paragraph 41, *supra*.

109. The Millennium Defendants, the Millennium Founders Webcor, Handel, the Engineering Defendants, and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' violations of Civil Code section 895 *et seq.*

SECOND CAUSE OF ACTION

Negligence Against the Millennium Defendants (all directly liable, all also alternatively indirectly liable based on secondary liability theories described in §IV), Millennium Founders (all indirectly liable based on secondary liability theories described in §IV), Webcor (directly liable), Handel (directly liable), the Engineering Defendants (all directly liable except Langan, whose liability is based on being the successor to Treadwell & Rollo), ARUP (directly liable), the Salesforce Tower Defendants (directly liable), and Does 1 Through 100, Inclusive

110. The HOA re-alleges and incorporates by reference Paragraphs 1 through 109 above as if fully set forth herein.

A. Direct Liability

111. Each of the Millennium Defendants were and are a developer who participated in the process of the design, engineering, manufacture, construction, and management of condominium units, buildings, improvements, and structures of the Millennium Tower and who performed labor, supplied materials, equipment, or services necessary for the building and construction of the Millennium Tower with the knowledge that the condominium units would be sold to, and used by, members of the public.

112. For example, MSD was a developer because it sold certain of the Tower's residential units to the public. MPI was a developer because of its marketing efforts on the Millennium Partners website, its participation in the site selection process, its participation in the structural engineering process, and its participation in various other design and engineering efforts. MPM was a developer because of its efforts to sell various units in the Tower and its participation in the landscaping design process. MP LLC and MSH were developers because of their efforts to manage the activities of their agents, including the Millennium Founders, relating

to the development of the Millennium Tower. MSH was also a developer because it participated in the selection of the finishes for the units in the Millennium Tower and managed the process of selling the Tower's units.

113. Each of the Webcor, Handel, and the Engineering Defendants were and are a contractor, general contractor, subcontractor, supplier, architect, engineer, or other person, entity, or professional who participated in the process of the design, engineering, manufacture, construction, and management of condominium units, buildings, improvements, and structures of the Millennium Tower and who performed labor, supplied materials, equipment, and/or services necessary for the building and construction of the Millennium Tower with the knowledge that the condominium units would be sold to, and used by, members of the public.

114. In so doing, the Millennium Defendants, Webcor, Handel, and the Engineering Defendants, caused the Millennium Tower to be designed, engineered, constructed, and/or managed through their own works of labor, their supplying of materials, equipment, and services, and through causing other contractors and subcontractors to perform works of labor to supply materials, equipment, and services in order to properly complete and manage the Millennium Tower and subject structures so that it could be sold to and used by members of the public.

115. Each of the Millennium Defendants, Webcor, Handel, and the Engineering Defendants negligently, carelessly, tortiously, and wrongfully failed to use reasonable care in the analysis, preparation, design, manufacture, construction, and/or management of the real property and structures of the Millennium Tower, thereby causing damages, including, among other things, excessive and differential settlement of the Tower and the Podium, and defects and deficiencies in the foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors (including but not limited to excessive noise and odors moving between units), exterior doors, roofing, and utility connections.

116. For example, MSD failed to use reasonable care in selecting the inadequate foundation system, inadequate garage construction and waterproofing, defective windows, and

other structural systems leading to the curtain wall corrosion and water intrusion, inter-unit odor transmission, cracks, and alignment issues. In addition, each of MSH, MPM, MP LLC and MPI failed to use reasonable case in directing the activities of the Engineering Defendants.

117. Each of the Millennium Defendants, Webcor, Handel, and the Engineering Defendants knew or should have known that if the Millennium Tower was not properly or adequately designed, engineered, supervised, constructed, and/or managed, the owners and users would be substantially damaged thereby, and the condominium units, buildings, improvements, and structures would be defective.

118. Each of the Millennium Defendants, Webcor, Handel, and the Engineering Defendants were under a duty to exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the condominium units, buildings, improvements, and structures, and knew or should have foreseen with reasonable certainty that purchasers and/or users would suffer damages if the Millennium Defendants, Webcor, Handel, and the Engineering Defendants failed to perform their duty to cause the Property and the structures of the Millennium Tower to be designed, engineered, constructed, and managed in a proper workmanlike manner and fashion.

119. Each of the Millennium Defendants, Webcor, Handel, and the Engineering Defendants breached their duty to exercise ordinary care. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants failed and neglected to perform their work, labor, and services properly or adequately. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants so negligently performed their work, labor, and/or services such that the premises and structures of the Millennium Tower were designed, engineered, constructed, and/or managed improperly, negligently, carelessly, and/or not in a workmanlike manner.

120. Defendant Arup was hired by the TJPA's architect to provide geotechnical engineering services relating to the lateral support for the Millennium Tower made necessary by the excavation for the Transit Center. Arup performed work, labor, and/or services for the soils evaluation, support wall, and buttress pile wall between the Transit Center and the Millennium Tower for the purpose of providing lateral and subjacent support to the Millennium Tower to limit any sinking caused by the construction of the Transit Center.

121. Arup was under a duty to exercise ordinary care as engineer, subcontractor, manager, or otherwise to avoid reasonably foreseeable injury to users and purchasers of the condominium units, buildings, improvements, and structures of and in the Millennium Tower. Arup knew or should have foreseen with reasonable certainty that the HOA and its members would suffer damages if the soils evaluation, support wall, and buttress pile wall were not properly or adequately designed, engineered, supervised, and/or constructed.

122. Arup breached its duty to exercise ordinary care. On information and belief, the HOA alleges that Arup negligently, carelessly, tortiously, and wrongfully failed to use reasonable care in the analysis, preparation, design, manufacture, and/or construction of the soils evaluation, lateral support, and/or buttress pile wall, thereby causing damage to the Millennium Tower, including, among other things, excessive and differential settlement of the Tower and Podium, and defects and deficiencies in the Garage.

123. The Salesforce Tower Defendants were and are the developers, builders, sellers, managers or other entities primarily responsible for the construction of the Salesforce Tower and who performed labor and supplied materials, equipment, and/or services necessary for the construction of the Salesforce Tower. In so doing, the Salesforce Tower Defendants, in their capacity as developers, builder, sellers, managers, or otherwise, caused the Salesforce Tower to be designed, engineered, constructed, and/or managed through their own works of labor, their supplying of materials, equipment, and services, and through causing other contractors and subcontractors to perform works of labor to supply materials, equipment, and services in order to construct and manage the Salesforce Tower.

124. The Salesforce Tower Defendants were and are under a duty to exercise ordinary care or otherwise to avoid reasonably foreseeable injury to the HOA and its members. The Salesforce Tower Defendants knew or should have foreseen with reasonable certainty that the HOA and its members would suffer damages if the Salesforce Tower was not properly or adequately designed, engineered, supervised, and/or constructed.

125. The Salesforce Tower Defendants breached their duty to exercise ordinary care. On information and belief, the HOA alleges that the Salesforce Tower Defendants negligently,

carelessly, tortiously, and wrongfully failed to use reasonable care in the analysis, preparation, design, and/or construction of the Salesforce Tower, thereby causing damage to the Millennium Tower, including, among other things, excessive and differential settlement of the Tower and Podium, and defects and deficiencies in the Garage. In particular, the TJPA and the Salesforce Tower defendants acted with conscious disregard of the foreseeable risk of harm that the excavation and dewatering work at the Transit Center and the Salesforce Tower might cause injury to the Millennium Tower by failing to take adequate protective measures to secure, monitor, or otherwise mitigate effects to the Millennium Tower prior to and during the excavation and dewatering work at the Transit Center and the Salesforce Tower.

126. As a direct and proximate result of these breaches, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

B. Secondary Liability

127. Alternatively, the Millennium Defendants are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

128. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

129. Langan is secondarily liable for this cause of action pursuant to the theory described in paragraph 41, *supra*.

130. The Millennium Defendants, the Millennium Founders, Webcor, Handel, the Engineering Defendants, ARUP, the Salesforce Tower Defendants, and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' negligence.

THIRD CAUSE OF ACTION

Breach of Express Warranties Against MSD (directly liable), Millennium Defendants (all except MSD secondarily liable based on theories described in §IV), Millennium Founders (all secondary liable based on theories described in §IV), and Does 1 Through 100, Inclusive

131. The HOA re-alleges and incorporates by reference Paragraphs 1 through 130

above as if fully set forth herein.

A. Direct Liability

132. Pursuant to California Civil Code section 5980, the HOA has standing to institute litigation "in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following: . . . (b) Damage to the common area. (c) Damage to a separate interest that the association is obligated to maintain or repair [or] (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair."

133. As a result of California Civil code section 5980, the HOA can bring a cause of action based on a breach of an express warranty provided to a homeowner that relates to damage to the common area of the Millennium Tower, a separate interest of a homeowner that the HOA is obligated to maintain or repair, or a separate interest of a homeowner that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair. *See Windham at Carmel Mountain Ranch Assn. v. Superior Court*, 109 Cal. App. 4th 1162, 1175 (2003) ("the legislative intent of section [5980] is to give associations the standing to sue as real parties in interest in all types of actions for damage to common areas").

134. Accordingly, the HOA brings this cause of action based on express warranties made by the seller of the Tower's units (MSD) to the buyer of the Tower's units (homeowners) on which the homeowners reasonably relied and which MSD breached. These warranties related to the conditions of the common areas, separate interests that the HOA is obligated to maintain or repair, and separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the HOA is obligated to maintain or repair.

135. MSD was a seller of various units in the Millennium Tower to individual homeowners, who are members of the HOA.

136. MSD expressly warranted to homeowners of units in the Millennium Tower through sales and advertising materials and through sales representatives for the Property that the Millennium Tower was designed and constructed in a commercially reasonable and habitable

manner when offering the units of the Millennium Tower for sale to the general public for use as residences. For instance, the Millennium Tower San Francisco Sales Manual states, "With its superior design, highest quality, thoughtful service, and extraordinary amenities, we believe Millennium Tower will be the best residential tower ever built in San Francisco." Sales representatives of MSD provided prospective homeowners with sales materials containing representations about the superior and luxury quality of the building.

137. The sales representatives who used this sales manual in inducing purchases of the Tower' units were acting on behalf of MSD when doing so, and were acting within the scope of their employment and/or agency relationship with MSD when doing so.

138. These express warranties were made when MSD knew that the building was settling excessively and differentially.

139. Homeowners relied on the express warranties of MSD discussed in paragraph 136 *supra* when they purchased condominium units within the Millennium Tower from MSD, believing at the time of sale that a luxury building would, at a minimum, possess a foundation that was not massively defective.

140. The massively defective foundation as well as the other defects described in section VII *supra* fall with the definition of "(b) Damage to the common area. (c) Damage to a separate interest that the association is obligated to maintain or repair. [or] (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair." Cal. Civ. Code § 5980.

141. MSD breached these express warranties by selling the condominium units in the Millennium Tower with the above-described deficiencies in the design, specification, planning, supervision, development, improvement, and repair thereof.

142. As a direct and proximate result of the breach of express warranties by MSD the HOA and its members suffered damages stemming from the excessive and differential settlement of the Tower and Podium structures, and defects and deficiencies in the foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors (including but not limited to noise and odors moving between units),

exterior doors, roofing, and utility connections as set forth herein.

B. Secondary Liability

143. The Millennium Defendants other than MSD are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

144. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

145. MSD, the remaining Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' breach of express warranty.

FOURTH CAUSE OF ACTION

Breach of Implied Warranties Against MSD (directly liable), Millennium Defendants (all except MSD secondarily liable based on theories described in §IV), Millennium Founders (all secondarily liable based on theories described in §IV), Webcor (directly liable), and Does 1 Through 100, Inclusive

146. The HOA re-alleges and incorporates by reference Paragraphs 1 through 145 above as if fully set forth herein.

A. Direct Liability

147. Pursuant to California Civil Code section 5980, the HOA has standing to institute litigation "in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following: . . . (b) Damage to the common area. (c) Damage to a separate interest that the association is obligated to maintain or repair [or] (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair."

148. As a result of California Civil code section 5980, the HOA can bring a cause of action for breach of an implied warranty provided to a homeowner that relates to damage to the common area of the Millennium Tower, a separate interest of a homeowner that the HOA is obligation to maintain or repair, or a separate interest of a homeowner that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is

obligated to maintain or repair. *See Windham at Carmel Mountain Ranch Assn. v. Superior Court*, 109 Cal. App. 4th 1162, 1175 (2003) ("the legislative intent of section [5980] is to give associations the standing to sue as real parties in interest in all types of actions for damage to common areas").

149. Accordingly, the HOA brings this cause of action based on implied warranties made by the seller of the Tower's units (MSD) and the (Webcor). These warranties related to the conditions of the common areas, separate interests that the HOA is obligated to maintain or repair, and separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the HOA is obligated to maintain or repair.

150. MSD was the seller of various units in the Millennium Tower to individual homeowners, who are members of the HOA.

151. MSD provided prospective buyers with a written statement disclaiming any knowledge of any substantial defects as required by California Civil Code § 1134(b). This "Property Disclosure and Information Statement," dated May 2011, failed to disclose that the building was experiencing excessive vertical and differential settlement. This disclosure constituted an implied warranty that no substantial defects existed in the common areas, the separate interests the HOA is obligated to maintain and repair, or the separate interests that are integrally related to the common areas and separate interests.

152. In addition, Webcor impliedly warranted that the Millennium Tower was designed and constructed in a commercially reasonable and workmanlike manner and consistent with the standards set forth in California civil code sections 895 through 897.

153. MSD impliedly warranted that the Millennium Tower was designed and constructed in a commercially reasonable and workmanlike manner when MSD offered the condominium units of the Millennium Tower for sale to the general public and delegated the duty of maintenance and repair to the HOA.

154. The Millennium Tower was not of proper durability, reliability, and/or general quality and not fit for its intended use.

155. As a direct and proximate result of MSD's and Webcor's breaches, the HOA has

suffered and will continue to suffer damages in an amount to be proved at trial.

156. Individual homeowners relied on the implied warranties of MSD and Webcor when they purchased condominium units within the Millennium Tower from MSD.

157. The massively defective foundation as well as the other defects described in section VII supra fall with the definition of "(b) Damage to the common area. (c) Damage to a separate interest that the association is obligated to maintain or repair. [or] (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair." Cal. Civ. Code § 5980.

B. Secondary Liability

158. The Millennium Defendants other than MSD are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

159. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

160. MSD, the remaining Millennium Defendants, the Millennium Founders, Webcor, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' breach of implied warranty.

FIFTH CAUSE OF ACTION

Strict Liability Against the Millennium Defendants (all directly liable, all also secondarily liable based on theories described in §IV), Millennium Founders (all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

161. The HOA re-alleges and incorporates by reference Paragraphs 1 through 160 above as if fully set forth herein.

A. Direct Liability

162. All of the Millennium Defendants are, and at all times relevant were, engaged in the mass production of condominiums for sale and use by members of the general public.

163. For example, MSD was involved in the production of the Tower's units because it sold certain of the Tower's residential units to the public. MPI was involved in the production of the Tower's units because it developed the Tower's residential units through its marketing efforts

on the Millennium Partners website, participated in the site selection process, participated in the structural engineering process, and participated in various other design and engineering efforts. MPM was involved in the production of the Tower's units because it sold various units in the Tower and its participated in the landscaping design process. MP LLC and MSH were involved in the production of the Tower's units because they managed the activities of their agents, including the Millennium Founders, relating to the development of the Millennium Tower. MSH was also involved in the selection of the finishes for the units in the Millennium Tower and managed the process of selling the Tower's units.

164. In or about 2005–2013, all of the Millennium Defendants participated in the design, development, construction, marketing, and sale of condominium units, buildings, structures, and improvements for the Millennium Tower. In doing so, all of the Millennium Defendants developed the Millennium Tower with individual units for use as residential dwellings.

165. In these capacities, all of the Millennium Defendants knew that the condominium units, buildings, and structures would be sold to, and used by, members of the general public for the purpose of residences. All of the Millennium Defendants knew, or reasonably should have known, that the persons who would purchase the condominium units would do so without inspection for the defects set forth herein.

166. All of the Millennium Defendants impliedly warranted that the real property and structures in the Millennium Tower, including, among other things, the foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors, exterior doors, roofing, and utility connections, were of merchantable quality and were erected in a reasonable workmanlike manner.

167. All of the Millennium Defendants are strictly liable and responsible to the HOA for all damages suffered as a result of the defects and deficiencies at the Millennium Tower, including, among other things, excessive and differential settlement of the Tower and Podium, and defects and deficiencies in the foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors (including

but not limited to excessive odor transfers between units), exterior doors, roofing, and utility connections.

168. Within the past year, the HOA discovered that the underlying soils and component structures of the Millennium Tower are, and have been, experiencing defective conditions, including, among other things, excessive and differential settlement of the Tower and the Podium, and defects and deficiencies in the foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors (including but not limited to odors moving between units), exterior doors, roofing, and utility connections. Such defective components are not of merchantable quality, nor were they designed, erected, constructed, or installed in a workmanlike manner, but instead are defective and, as now known, demonstrate improper, nonexistent, and/or inadequate design, construction, manufacture and/or installation. The structures may be additionally defective in ways and to an extent not precisely known, but will be established at the time of trial according to proof.

169. The HOA properly notified all of the Millennium Defendants of the defective conditions of the Millennium Tower. Notwithstanding such notice, all of the Millennium Defendants have failed to acknowledge responsibility for all of the defective conditions or otherwise cause the appropriate restoration and/or repair to be made at their cost and expense.

170. The items generally referred to and particularly described herein were latent deficiencies in that the above-described defects arose out of, were attributable to, and are directly and proximately caused by the above-described latent deficiencies in the design, specifications, planning, supervision, construction, observation of construction, development, and improvement of the Millennium Tower. Before the HOA discovered them, such defects and deficiencies could not have been discovered by the exercise of reasonable diligence.

171. At all times relevant, the HOA relied on the skill of each of the Millennium Defendants to produce condominiums that are reasonably fit for their intended purpose.

172. The HOA is still not fully aware of all the causes, the full extent, and possible legal significance of the results or causes of the conditions described above due to the loss being continual and latent. The HOA is an organization of lay individuals who require expert

consultation to provide a review of the property conditions. The HOA is still not informed of any causes or entire results of the full extent of these latent deficiencies, nor is the HOA fully informed of the potential causes of the resultant distress due to the loss being continual and latent.

173. Any and all repair attempts by any of the Millennium Defendants failed to adequately correct the damages and deficiencies in the Millennium Tower thereby resulting in further property damage.

174. Instead of causing the necessary and required construction and repair of the Millennium Tower, all of the Millennium Defendants caused cosmetic, temporary, or ineffective repairs to be made to various portions of the Millennium Tower for the purpose of leading the HOA and its members to believe that the Millennium Defendants were resolving and correcting all deficiencies. By virtue of such conduct, each of the Millennium Defendants are estopped to assert that the HOA may not seek the damages herein sought.

175. The above-described defects arose out of, were attributed to, and are directly and proximately caused by the above-described deficiencies in the design, specification, planning, supervision, development, and improvement of the Millennium Tower and faulty repairs thereto, and before such defects were discovered by the HOA, they could not have been discovered by the exercise of reasonable diligence. As a direct and proximate result of the conduct herein alleged, the HOA has suffered damages in an amount to be proven at the time of trial.

B. Secondary Liability

176. Alternatively, the Millennium Defendants are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

177. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

178. The Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages for which defendants are strictly liable.

SIXTH CAUSE OF ACTION

Negligent Misrepresentation Sean Jeffries (directly liable); Millennium Defendants (all secondarily liable based on agency, respondeat superior, or secondary liability theories described in §IV); and Millennium Founders (all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

179. The HOA re-alleges and incorporates by reference Paragraphs 1 through 178 above as if fully set forth herein.

A. Direct Liability

180. Sean Jeffries represented on February 28, 2014 to the HOA that he was not "aware to date of any information that gives us concern for the safety of the building or any significant impact on the structure."[48] This representation was demonstrably false, which Sean Jeffries knew at the time he made it, as the Tower had already exceeded the revised upper limit of the total expected lifetime settlement.

181. At the time, Sean Jeffries did not have any reasonable ground for believing his February 28, 2014 representation was true. As Sean Jeffries was aware, the Tower was originally predicted to sink no more than 4 to 6 inches over its lifetime, and that the predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches. At the time of his representation on February 28, 2014, Sean Jeffries also knew that the Tower had already exceeded its revised predicted lifetime settlement. Sean Jeffries also knew that the TJPA's construction activities would likely cause further differential settlement.

182. Sean Jeffries also made periodic presentations to the HOA at the executive session board meetings where he repeatedly assured the HOA that Millennium Partners was monitoring the building, was not aware of any concerns regarding building settlement, and that any settlement was within normal limits. Sean Jeffries made these misrepresentations orally to the members of the HOA's executive committee at certain executive board meeting sessions between January 2014 and January 2016. These meetings took place on or around January 2014, May

[48] Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

2014, October 6, 2014, November 2014, January 26, 2015, February 23, 2015, and October 19, 2015, January 14, 2016 in various conference rooms in the Millennium Tower. Sean Jeffries also did not have any reasonable ground for believing these representations were accurate when he made them because he knew that the Tower had already exceeded its revised predicted lifetime settlement, the settlement amount was not normal and was instead abnormal, and that the TJPA's construction activities would likely cause further differential settlement.

183. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended Easement Amendment with the TJPA, purporting to represent the HOA but without the authority to do so, which resulted in his, not the HOA's, receiving monitoring reports from the TJPA. At the time, Sean Jeffries did not have any reasonable ground for believing he was authorized to sign the Amended Easement Agreement with the TJPA on behalf of the HOA without the HOA's authority to do so. After Sean Jeffries misrepresented that he was authorized to sign the Amended Easement Amendment with the TJPA on behalf of the HOA, Sean Jeffries or an employee and/or agent of one or more of the Millennium Defendants, and not the HOA, began receiving monitoring data collected by the TJPA, which further revealed that the Tower was settling vertically and differentially in excess of the design specifications, including the revised expected maximum settlement. Sean Jeffries did not disclose this data to the HOA, but instead concealed it.

184. Sean Jeffries intended that the HOA would rely on these representations by failing to take action to correct the defects and damage to the Millennium Tower of which it was not aware.

185. The HOA reasonably relied on Sean Jeffries' representations because the HOA reasonably believed that Sean Jeffries would fulfill his duty of disclosure.

186. In reliance on Sean Jeffries' representations, the HOA did not take corrective action to prevent continuing and future damage.

187. The HOA's reliance on Sean Jeffries' representations was a substantial factor in causing damages to the HOA, including by diminishing the value of the common areas of Millennium Tower and by delaying any corrective action that could reduce the extent of damage.

188. Because Sean Jeffries withheld information from the HOA, Sean Jeffries necessarily possess full information concerning the facts of their own negligent acts.

189. As a direct and proximate result of Sean Jeffries' negligent conduct, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

B. Secondary Liability

190. When making these negligent misrepresentations, Sean Jeffries was acting on behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD and made the above misrepresentations in the scope of his authority as an agent of MSD.

191. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and made these misrepresentations in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

192. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

193. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he is an agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

194. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

195. Alternatively, the Millennium Defendants are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

196. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

197. Sean Jeffries, the Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by their negligent misrepresentation.

SEVENTH CAUSE OF ACTION

Fraudulent Misrepresentation Against Sean Jeffries (directly liable); Millennium Defendants (all indirectly liable based on agency, respondeat superior or secondary liability theories described in §IV); and Millennium Founders (all secondarily liable based on liability theories described in §IV), and Does 1 Through 100, Inclusive

198. The HOA re-alleges and incorporates by reference Paragraphs 1 through 197 above as if fully set forth herein.

A. Direct Liability

199. Sean Jeffries represented on February 28, 2014 to the HOA that he was were not "aware to date of any information that gives us concern for the safety of the building or any significant impact on the structure."[49] This representation was demonstrably false, which Sean Jeffries knew at the time he made it, as Sean Jeffries knew that the Tower had already exceeded the revised upper limit of the total expected lifetime settlement.

200. At the time, Sean Jeffries knew that the Tower was originally predicted to sink no more than 4 to 6 inches over its lifetime, and that the predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches. At the time of the representation on February 28, 2014, Sean Jeffries knew that the Tower had already exceeded its revised predicted lifetime settlement. Sean Jeffries also knew that the TJPA's construction activities would likely cause further differential settlement.

201. On information and belief, Sean Jeffries also made periodic presentations to the HOA at the executive session board meetings where he repeatedly assured the HOA that Millennium Partners was monitoring the building, was not aware of any concerns regarding building settlement, and that any settlement was within normal limits. These misrepresentations

[49] Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

were made orally by Sean Jeffries to the members of the HOA's executive committee at certain executive board meeting sessions between January 2014 and January 2016. These meetings took place on or around January 2014, May 2014, October 6, 2014, November 2014, January 26, 2015, February 23, 2015, and October 19, 2015, January 14, 2016 in various conference rooms in the Millennium Tower. Sean Jeffries knew these representations were not accurate when he made them because he knew that the Tower had already exceeded its revised predicted lifetime settlement, the settlement amount was not normal and was instead abnormal, and that the TJPA's construction activities would likely cause further differential settlement.

202. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended Easement Amendment with the TJPA, purporting to represent the HOA but without the authority to do so, which resulted in his, not the HOA's, receiving monitoring reports from the TJPA. After Sean Jeffries misrepresented that he was authorized to sign the Amended Easement Amendment with the TJPA on behalf of the HOA, Sean Jeffries or another employee or agent of one of the Millennium Defendants, and not the HOA, began receiving monitoring data collected by the TJPA, which further revealed that the Tower was settling vertically and differentially in excess of the design specifications, including the revised expected maximum settlement. Sean Jeffries did not disclose this data to the HOA, but instead concealed it.

203. Sean Jeffries intended that the HOA would rely on this representation by failing to take action to correct the defects and damage to the Millennium Tower of which it was not aware.

204. The HOA reasonably relied on Sean Jeffries' representations because the HOA reasonably believed that Sean Jeffries would fulfill his duty of disclosure.

205. In reliance on Sean Jeffries' representations, the HOA did not take corrective action to prevent continuing and future damage.

206. The HOA's reliance on Sean Jeffries' representations caused damages to the HOA, including by diminishing the value of the common areas of Millennium Tower and by delaying any corrective action that could reduce the extent of damage.

207. Because Sean Jeffries intentionally withheld information from the HOA, Sean

Jeffries necessarily possesses full information concerning the facts of his own fraudulent acts.

208. As a direct and proximate result of Sean Jeffries' fraudulent conduct, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

209. Because Sean Jeffries' conduct was malicious, oppressive, and fraudulent, and taken in knowing disregard of his legal duties, punitive damages should be awarded. Sean Jeffries knew that the construction and design of the Millennium Tower was deficient and that the Millennium Tower was suffering from vertical and differential settlement, and consciously and recklessly disregarded the probability of injury to residents of Millennium Tower units and to the common areas of the Millennium Tower by developing and marketing the Millennium Tower despite knowing that construction methods and design plans were deficient, and by continuing to market the units after receiving information that the building was sinking and tilting.

B. Secondary Liability

210. When making these fraudulent misrepresentations, Sean Jeffries was acting on behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

211. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

212. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

213. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

214. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

215. Alternatively, the Millennium Defendants are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

216. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

217. Sean Jeffries, the Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by their fraudulent misrepresentation.

EIGHTH CAUSE OF ACTION

Fraudulent Concealment Against Sean Jeffries and Luciano (directly liable); Millennium Defendants (all secondarily liable based on agency, respondeat superior, or secondary liability theories described in §IV); and Millennium Founders (all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

218. The HOA re-alleges and incorporates by reference Paragraphs 1 through 217 above as if fully set forth herein.

A. Direct Liability

219. As designated contact for receipt of monitoring data from the TJPA, Sean Jeffries owed a fiduciary duty to the HOA, its board, and its members, who relied on Sean Jeffries to provide documentation and information regarding the condition of the Millennium Tower and to direct certain remediation measures.

220. As a member of the HOA Board, Luciano owed a fiduciary duty to the HOA and its members. In making certain partial disclosures to the HOA and its members, Luciano and Sean Jeffries also had a duty of full and accurate disclosure to the HOA and its members. Finally, as the persons and entities with exclusive knowledge of material information about the condition of the Millennium Tower not available to the HOA, including the Tower's excessive

vertical and differential settlement, Sean Jeffries, and Luciano owed a duty of disclosure to the HOA and its members.

221. On information and belief, the HOA alleges that despite owing a duty of disclosure to the HOA, Sean Jeffries and Luciano intentionally failed to disclose certain facts regarding the excessive vertical and differential settlement of the Millennium Tower and instead actively concealed those facts for as long as possible.

222. Sean Jeffries, and Luciano knew that the Tower was originally predicted to sink no more than 4 to 6 inches over its lifetime. Sean Jeffries, and Luciano also knew that the predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches.

223. On information and belief, Sean Jeffries and Luciano received monitoring data on the settlement building continuously over a period of years, starting as early as 2010. Arup has prepared at least 58 memoranda to the TJPA providing updates on settlement monitoring through 2016. On information and belief, this same settlement data was sent by TJPA to Sean Jeffries and Luciano, who in turn transmitted the settlement data to DeSimone for evaluation. DeSimone then prepared its own analysis of the Arup data, summarized in numerous memoranda that were addressed to Steven Hood of Millennium Partners.[50]

224. The DeSimone memoranda, based upon the Arup monitoring data and produced directly to Sean Jeffries and Luciano, unequivocally show excessive vertical and differential settlement of the Millennium Tower. For example, a DeSimone Memorandum dated December 14, 2012, demonstrates the Tower had already sunk over 11 inches.

225. Yet the HOA was not made aware of the true nature of the wrongful conduct and the full extent to which the Tower was experiencing excessive vertical and differential settlement until 2016. Sean Jeffries, and Luciano failed to disclose to the HOA before 2016 that the Tower had exceeded the original predicted lifetime settlement range of 4 to 6 inches as of January 2009,

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[50] *See, e.g.*, Memorandum from Nicolas Rodrigues to Steven Hood (Millennium Partners) re: 301 Mission Street - Settlement Monitoring (review of most recent settlement data provided by Millennium Partners to DeSimone) (Dec. 13, 2013); Email from Brian Dykes (TJPA) to Steven Hood Re: Instrument Monitoring (attaching June 28, 2013 Arup Memorandum Re: Manually Read Inclinometer Update) (July 16, 2013).

and Sean Jeffries and Luciano also failed to disclose to the HOA before 2016 that the Tower had already exceeded the revised predicted maximum lifetime settlement of 12.3 inches.

226. As of the signing of the First Amendment to the Easement Amendment, Sean Jeffries, and Luciano also knew that the TJPA's construction activities at the site of the Transit Center would likely cause additional vertical and differential settlement of the Tower and the Podium, and potentially other damages. As of early 2014, Sean Jeffries, and Luciano also knew that the TJPA's construction activities at the site of the Transit Center had already caused vertical and differential settlement of the Tower and the Podium, damage to the Garage, water intrusion, and other damages.

227. On information and belief, the HOA alleges that Sean Jeffries and others, including representatives of the TJPA, signed a confidentiality agreement on March 17, 2010 to conceal from the HOA and others the extent of the settlement and that the TJPA's construction activities at the site of the Transit Center, adjacent to the Millennium Tower, would likely cause additional vertical and differential settlement of the Tower and the Podium.

228. On information and belief, the HOA alleges that Sean Jeffries, in a further attempt to conceal from the HOA for as long as possible that the Tower was settling vertically and differentially in excess of the design specifications, signed the Amended Easement Amendment with the TJPA. Because Sean Jeffries signed the Amended Easement Amendment with the TJPA, Sean Jeffries or other employees of the Millennium Defendants, and not the HOA, began receiving monitoring data collected by the TJPA, which further revealed that the Tower was settling vertically and differentially in excess of the design specifications, including the revised expected maximum settlement. Sean Jeffries did not disclose this data to the HOA, but instead concealed it.

229. Sean Jeffries knew that the Millennium Tower was settling differentially at least by March 15, 2010, if not earlier, when Sean Jeffries and others employees of Millennium Defendants received monitoring data from Arup that discussed differential settlement. Despite knowing of the differential settlement and the detrimental impact of the TJPA's activities on the Millennium Tower, Sean Jeffries and Luciano failed to disclose to the HOA the full extent of the

wrongful conduct and its effects before 2016, including that the TJPA's construction activities at the site of the Transit Center had contributed to the excessive vertical and differential settlement of the Tower and the Podium far in excess of the design specifications, damage to the Garage, water intrusion, and other damages.

230. In his capacity as an executive for the Millennium Defendants, Luciano knew of the vertical and differential settlement of the Tower and Podium and other ongoing damages to the Property resulting from the design and construction defects and the TJPA's activities. Luciano, a Vice President at MPM and a member of the HOA's Board from approximately 2009 through 2016, wrongfully failed to disclose to the HOA and its members all material facts regarding the Tower and instead actively concealed them, in violation of his duty of disclosure to the HOA.

231. Sean Jeffries further represented on February 28, 2014 to the HOA that he was not "aware to date of any information that gives us concern for the safety of the building or any significant impact on the structure." This representation was demonstrably false, which Sean Jeffries knew at the time he made it, as Sean Jeffries knew that the Tower had already exceeded the revised upper limit of the total expected lifetime settlement. In a December 13, 2013 Memorandum to Millennium Partners, DeSimone observed that the total measured settlement was "now officially outside the maximum predicted value provided by Treadwell and Rollo (Langan)."

232. In failing to disclose these material facts while instead making misleading statements and only partially disclosing the true state of the Tower, Sean Jeffries, and Luciano intended to deceive the HOA, knowing that the HOA could not and would not take corrective action to address problems of which the HOA was not aware.

233. In reliance on Sean Jeffries and Luciano's misrepresentations and failures to disclose, the HOA did not take early corrective action to prevent future damage.

234. The HOA's reliance on the fraudulent concealment of Sean Jeffries, and Luciano caused damages to the HOA, including by diminishing the value of the common areas of the Millennium Tower.

235. Because Sean Jeffries, and Luciano intentionally withheld information from the HOA, Sean Jeffries, and Luciano necessarily possess full information concerning the facts of their own fraudulent acts.

236. As a direct and proximate result of the fraudulent conduct of Sean Jeffries, and Luciano, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

237. Because the conduct of Sean Jeffries and Luciano was malicious, oppressive, and fraudulent, and taken in knowing disregard of their legal duties, punitive damages should be awarded. Sean Jeffries and Luciano knew that the construction and design of the Millennium Tower was deficient and that the Millennium Tower was suffering from excessive vertical and differential settlement, and consciously and recklessly disregarded the probability of injury to residents of Millennium Tower units and to the common areas of the Millennium Tower by developing and marketing the Millennium Tower despite knowing that its construction methods and design plans were deficient, and by continuing to market the units after they received information that the building was sinking and tilting.

B. Secondary Liability

238. In engaging in these acts of fraudulent concealment, Sean Jeffries was acting on behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD and made the above misrepresentations in the scope of his authority as an agent of MSD.

239. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and made these misrepresentations in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

240. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

241. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he is

an agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

242. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

243. In engaging in these acts of fraudulent concealment, Luciano was acting on behalf of MSD, for which he is an agent and/or principal. Luciano was acting as the agent and/or employee of MSD and his conduct was in the scope of his authority as an agent of MSD and/or within the scope of this employment as an employee of MSD.

244. In the alternative, Luciano was acting on behalf of MSH, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

245. In the alternative, Luciano was acting on behalf of MPM, for which he is the Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

246. In the alternative, Luciano was acting on behalf of MP LLC, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

247. In the alternative, Luciano was acting on behalf of MPI, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

248. Alternatively, the Millennium Defendants are secondarily liable for this cause of

action pursuant to the theories described in §IV *supra*.

249. The Millennium Founders are secondarily liable for this cause of action pursuant to the theories described in §IV *supra*.

250. Sean Jeffries, Luciano, the Millennium Defendants, the Millennium Founders, and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' fraudulent concealment.

NINTH CAUSE OF ACTION

Breach of Fiduciary Duty Against Sean Jeffries, Luciano, and MPI (directly liable); Millennium Defendants (all indirectly liable based on agency and/or respondeat superior and all secondarily liable based on theories described in §IV); and Millennium Founders (all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

251. The HOA re-alleges and incorporates by reference Paragraphs 1 through 250 above as if fully set forth herein.

A. Direct Liability

252. MPI owed a fiduciary duty to the HOA during the period when it was a member of the HOA's Board of Directors, which occurred during the period from the creation of the HOA Board in 2009 through at least part of 2011. For example, at the March 30, 2010 HOA meeting, all five members present at the Board meeting were officers, directors, or employees of MPI. The following individuals employed by MPI were all on the HOA's Board during the period from 2009 through at least part of 2011: Richard Baumert, Diana Nelson, Maijken Johnson, Carrie Leung, John Luciano, Jeff Jeffries, and Craig Mooney. In addition, each of these board members represented publicly that they were employed by "Millennium Partners," which referred to MPI. Each was acting on behalf of MPI when acting as board members of the HOA.

253. MPI knew that the building was settling excessively and differentially by March 15, 2010, if not earlier. Yet MPI breached its fiduciary duties to the Board by, among other acts and omissions, failing to maintain sufficient reserve and operating funds to maintain and repair the known defects; failing to act in the best interests of the HOA by immediately seeking to

repair known defects and halt ongoing damage to the building; and by acting in the best interests of MPI, not the HOA, through the concealment of information about the excessive and differential settlement from homeowners and other Board members. In so acting, MPI breached its fiduciary duties to the Board, including but not limited to its duties of care, good faith and fair dealing, and loyalty.

254. As designated contact for receipt of monitoring data from the TJPA, Sean Jeffries owed a fiduciary duty to the HOA, its board, and its members.

255. Despite owing this fiduciary duty, Sean Jeffries wrongfully failed to disclose to the HOA and its members all material facts regarding the substantial defects at the Millennium Tower. Such failure constituted a breach of his fiduciary duties to the Board, including but not limited to a breach of his duties of care, good faith and fair dealing, and loyalty to the HOA.

256. As a member of the HOA Board, Luciano owed a fiduciary duty to the HOA and its members. Board members are expected to act with good judgment, in good faith, and in the best interests of their organization.

257. Despite owing such a fiduciary duty, Luciano wrongfully failed to disclose to the HOA and its members all material facts regarding the substantial defects at the Millennium Tower. Such failure constituted a breach of his fiduciary duties to the Board, including but not limited to a breach of his duties of care, good faith and fair dealing, and loyalty to the HOA.

258. As a direct and proximate result of Sean Jeffries, Luciano and MPI's breaches, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

259. The HOA also seeks punitive or exemplary damages because Sean Jeffries, Luciano and MPI's conduct was malicious, oppressive, and fraudulent, and taken in knowing disregard of their legal duties. Sean Jeffries, Luciano, and MPI knew that the construction and design of the Millennium Tower was deficient and that the Millennium Tower was suffering from excessive vertical and differential settlement, and consciously and recklessly disregarded the probability of injury to future residents of Millennium Tower units and to the common areas of the Millennium Tower by developing and marketing the Millennium Tower despite knowing that its construction methods and design plans were deficient, and by continuing to market the

units after they received information that the building was sinking and tilting.

B. Secondary Liability

260. In engaging in this breach of fiduciary duty, Sean Jeffries was acting on behalf of MSD, for which he is the agent. Sean Jeffries was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

261. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

262. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

263. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

264. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

265. In engaging in this breach of fiduciary duty, Luciano was acting on behalf of MSD, for which he is the agent. Luciano was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

266. In the alternative, Luciano was acting on behalf of MSH, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

267. In the alternative, Luciano was acting on behalf of MPM, for which he is the Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

268. In the alternative, Luciano was acting on behalf of MP LLC, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

269. In the alternative, Luciano was acting on behalf of MPI, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

270. In the alternative, the Millennium Defendants are indirectly liable based on secondary liability theories described in §IV *supra*.

271. In addition, the Millennium Founders are indirectly liable based on secondary liability theories described in §IV *supra*.

272. Sean Jeffries, Luciano, MPI, the Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' breach of fiduciary duty.

TENTH CAUSE OF ACTION

Violation of Business and Professions Code § 17200 *et seq.* Against Sean Jeffries Luciano, and Millennium Defendants (all directly liable); Millennium Defendants (all indirectly liable based on agency and/or respondeat superior and all secondarily liable based on theories described in §IV); and Millennium Founders (all indirectly liable based on all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

273. The HOA re-alleges and incorporates by reference Paragraphs 1 through 272 above as if fully set forth herein.

A. Direct Liability

274. California Business and Professions Code section 17200 *et seq.* prohibit unfair competition, including any unlawful, unfair, or fraudulent business act or practice.

275. The conduct of the Millennium Defendants, Sean Jeffries, and Luciano alleged herein constitutes unlawful, unfair, or fraudulent business acts or practices.

276. The Millennium Defendants, Sean Jeffries, and Luciano's unlawful, unfair, and fraudulent business acts and practices included a pattern of violations of California Civil Code section 1134(b) in that they repeatedly failed to disclose the nature and extent of the vertical and differential settlement of the Millennium Tower to the HOA or its members.

277. Sean Jeffries' unlawful, unfair, or fraudulent business acts or practices include his misrepresentations in the course of his dealings and communications with the HOA Board, and his failure to disclose the differential settlement of the Millennium Tower to the HOA or its members.

278. Luciano's unlawful, unfair, or fraudulent business acts or practices include his misrepresentations in the course of his dealings and communications with the HOA Board, and his failure to disclose the differential settlement of the Millennium Tower to the HOA or its members.

279. MPI's unlawful, unfair, or fraudulent business acts or practices include its failure to disclose the differential settlement of the Millennium Tower to the HOA or its members in breach of its fiduciary duty.

280. As a direct and proximate result of the conduct of the Millennium Defendants, Sean Jeffries and Luciano constituting unfair, unlawful, or fraudulent business practices, the HOA has suffered and will continue to suffer damages entitling it to restitution in an amount to be proved at trial.

281. The HOA also seeks an order that Sean Jeffries, John Luciano, and the Millennium Defendants, be required to provide restitution to the HOA to restore money or property acquired by means of the Millennium Defendants, Sean Jeffries and Luciano's unfair, unlawful, or fraudulent practices and that resulted in injury to the common areas of the

Millennium Tower.

B. Secondary Liability

282. Sean Jeffries was acting on behalf of MSD, for which he is the agent. Sean Jeffries was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

283. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

284. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

285. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

286. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

287. Luciano was acting on behalf of MSD, for which he is the agent. Luciano was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

288. In the alternative, Luciano was acting on behalf of MSH, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

289. In the alternative, Luciano was acting on behalf of MPM, for which he is the Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

290. In the alternative, Luciano was acting on behalf of MP LLC, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

291. In the alternative, Luciano was acting on behalf of MPI, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

292. In the alternative, the Millennium Defendants indirectly liable based on secondary liability theories described in §IV *supra*.

293. In addition, the Millennium Founders indirectly liable based on secondary liability theories described in §IV *supra*.

294. Sean Jeffries, Luciano, the Millennium Defendants, the Millennium Founders, and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' violations of Business & Professions Code section 17200 *et seq*.

ELEVENTH CAUSE OF ACTION

Inverse Condemnation Against the TJPA

295. The HOA re-alleges and incorporates by reference Paragraphs 1 through 294 above as if fully set forth herein.

296. Inverse condemnation claims arise under Article I, section 19, of the California Constitution, which provides that "[p]rivate property may be taken or damaged for a public use and only when just compensation … has first been paid to … the owner." Cal. Const. art. I, § 19.

297. The construction of the Transit Center and Support System substantially affected the support, safety, and integrity of the Millennium Tower. The soil beneath the Millennium

Tower has been destabilized by the construction of the Transit Center and Support System, and the Property has suffered from material movement and/or settlement, which is expected to continue for the foreseeable future. This movement and settlement is both vertical and differential and has resulted, and will continue to result, in cracks in the foundations, slabs, and walls of the Millennium Tower, water intrusion through foundation walls, displacement of sewer and other utility connections, and other damage.

298. The TJPA's construction activities at the site of the Transit Center, adjacent to the Millennium Tower, have caused vertical and differential settlement of the Tower and Podium, damage to the Garage, water intrusion, and other damages.

299. Construction of the Transit Center is ongoing such that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to the Millennium Tower is unknown and ongoing.

300. The TJPA's construction of the Transit Center is a substantial and proximate cause of the vertical and differential settlement of the Tower and Podium, damage to the Garage, water intrusion, and other damages.

301. The HOA has suffered a taking of its property by the TJPA entitling the HOA to just compensation under Article I, section 19, of the California Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

302. The HOA is also entitled to costs, disbursements, and expenses, including attorney, appraisal, and engineering fees pursuant to Code of Civil Procedure Section 1036.

TWELFTH CAUSE OF ACTION

Trespass Against the TJPA

303. The HOA re-alleges and incorporates by reference Paragraphs 1 through 302 above as if fully set forth herein.

304. By its construction of the shoring wall, buttress wall, and related construction activities, the TJPA has intentionally, recklessly, or negligently entered the Millennium Tower or negligently caused construction-related objects to enter the Millennium Tower.

305. This entry into the Millennium Tower exceeded the TJPA's permission to enter

the Property.

306. The TJPA's conduct damaged the HOA because it was a substantial factor in causing vertical and differential settlement of the Millennium Tower, as well as cracks in the foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through foundation walls, displacement of sewer and other plumbing pipes, and other damage.

307. Construction of the Transit Center is ongoing such that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to the Millennium Tower is unknown and ongoing.

308. As a direct and proximate result of the TJPA's wrongful conduct, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

THIRTEENTH CAUSE OF ACTION

Nuisance Against the TJPA and the Salesforce Tower Defendants

309. The HOA re-alleges and incorporates by reference Paragraphs 1 through 308 above as if fully set forth herein.

310. The TJPA's construction of the Transit Center and the Salesforce Tower Defendants' construction of the Salesforce Tower has caused or contributed to the sinking and tilting of the Millennium Tower, and the other damages alleged herein.

311. The TJPA and the Salesforce Tower Defendants' use and maintenance of their properties has interfered with and continues to interfere with the HOA's and the HOA's members' use and enjoyment of the Millennium Tower common areas and has damaged and continues to damage the Millennium Tower. The excessive vertical and differential settlement is continuing and keeps adversely impacting the Millennium Tower, as alleged above.

312. The TJPA's activities in constructing the Transit Center and the Salesforce Tower Defendants' construction of the Salesforce Tower have substantially contributed to the Millennium Tower's excessive and differential settlement, as well as cracks in the foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through foundation walls, displacement of sewer and other plumbing pipes, and other damage and thereby have resulted in a diminution in the Millennium Tower's value.

313. Construction of the Transit Center and the Salesforce Tower is ongoing such that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to the Millennium Tower is unknown and ongoing.

314. The substantial invasion of the HOA's interest in the use and enjoyment of the common areas is unreasonable.

315. As a result of the TJPA and the Salesforce Tower Defendants' construction activities, the HOA has suffered damages as set forth herein.

316. As a direct and proximate result of the TJPA and the Salesforce Tower Defendants' wrongful conduct, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

317. The TJPA and the Salesforce Tower Defendants are jointly and severally liable for the HOA's damages resulting from defendants' nuisance.

FOURTEENTH CAUSE OF ACTION

Violation of Statutory Duty to Provide Subjacent and Lateral Support Pursuant to California Civil Code § 832 Against the TJPA, the Salesforce Tower Defendants, and Does 1 Through 100, Inclusive

318. The HOA re-alleges and incorporates by reference Paragraphs 1 through 317 above as if fully set forth herein.

319. The Millennium Tower receives lateral and subjacent support from the soil underlying the Transit Center, which adjoins the Millennium Tower to the southwest, and the soil underlying the Salesforce Tower, which is directly across Fremont Street from the Millennium Tower.

320. The TJPA and the Salesforce Tower Defendants have directed excavation and dewatering work at the Transit Center, by and through their agents and/or employees.

321. The excavation and dewatering work, and the manner in which this work was undertaken, was deliberately designed and constructed for the purpose of constructing improvements at the Transit Center and the Salesforce Tower.

322. The excavations at the Transit Center and Salesforce Tower are deeper than the

standard depth of foundations as defined by statute.

323. On information and belief, the HOA alleges that the TJPA and the Salesforce Tower Defendants failed to exercise ordinary care and skill and take reasonable precautions to sustain the adjoining land, as required by California Civil Code Section 832.

324. As a direct and proximate cause of the TJPA's and the Salesforce Tower Defendants' excavation and dewatering at the Transit Center, the Millennium Tower was deprived of lateral and subjacent support. The TJPA's and the Salesforce Tower Defendants' construction, excavation, and dewatering resulted in harm to the Millennium Tower, and to the Millennium Tower experiencing differential and vertical settlement beyond even the revised maximum settlement prediction provided by Treadwell & Rollo in 2009 of 10.3-12.3 inches,[51] as well as in cracks in the foundations, slabs, and walls of the Tower, Garage and Podium, water intrusion through foundation walls, displacement of sewer and other plumbing pipes, and other damage.

325. Construction of the Transit Center and Salesforce Tower is ongoing such that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to the Millennium Tower is unknown and ongoing.

326. As a direct and proximate result of the TJPA's and the Salesforce Tower Defendants' breach of duty pursuant to Section 832, the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

327. The TJPA and the Salesforce Tower Defendants are jointly and severally liable for the HOA's damages resulting from defendants' denial of subjacent and lateral support to the Millennium Tower.

FIFTEENTH CAUSE OF ACTION

Petition for Writ of Mandate to Compel Enforcement of CEQA Mitigation Measures Against TJPA

328. The HOA re-alleges and incorporates by reference Paragraphs 1 through 327

[51] Letter from Treadwell & Rollo to DBI (Feb. 19, 2009).

above as if fully set forth herein.

329. The FEIR and Mitigation Monitoring and Reporting Program set forth the enforceable mitigation measures that TJPA adopted under CEQA to avoid significant impacts on the environment, and the basic framework through which the enforceable mitigation measures will be monitored to ensure implementation. These mitigation measures included the obligation to monitor adjacent buildings for movement and take immediate action to control the movement if any is detected.

330. TJPA is responsible for both the implementation and monitoring of Mitigation Measures SG-1 through SG-5, as set forth in the Mitigation Monitoring and Reporting Program.

331. Despite TJPA's mandatory duty to implement, monitor, and enforce mitigation pursuant to the Mitigation Monitoring and Reporting Program, TJPA has failed to take required procedures or corrective measures to prevent the effects of the construction of the Transit Center, and that failure has led to an increased rate and increased amount of settlement of the Tower.

332. Construction of the Transit Center is ongoing. As such, any harm to the Tower from the Transit Center is continuous and repeated, and will remain so until impacts to the Tower resulting from Transit Center-related construction have stabilized. Until then, the full extent of any actual or potential harm to the Tower resulting from vertical or differential settlement is unknown and ongoing.

333. TJPA's failures as alleged herein breached mandatory duties and were not discretionary acts.

334. TJPA's duty to take corrective action is mandatory and subject to a writ of mandate notwithstanding any discretionary component in the manner in which the agency performs its mandatory duty. *See Coachella Valley Unified Sch. Dist. v. State of Cal.*, 176 Cal. App. 4th 93, 113 (2009) ("And, while a party may not invoke the remedy to force a public entity to exercise discretionary powers in any particular manner, if the entity refuses to act, mandate is available to compel the exercise of those discretionary powers in some way."); *L. A. Cty. Emps. Ass'n, Local 660 v. Cty. of L.A.*, 33 Cal. App. 3d 1, 8 (1973) ("While mandamus will not lie to compel governmental officials to exercise their discretionary powers in a particular manner, it

will lie to compel them to exercise them in some manner."). Mandate is appropriate to compel TJPA to exercise discretion and take corrective action as required by law.

335. The HOA has a direct and beneficial interest in ensuring that TJPA performs the Mitigation Measures, which were intended to protect the Tower, and has exhausted all other available remedies.

336. The HOA has a beneficial right to TJPA's performance of its duties based on the HOA's interest in mitigating further harmful effects to the Tower from subsidence and issues related to the removal of lateral and subjacent support due to neighboring construction and dewatering activities.

337. The HOA seeks only equitable, non-monetary relief as to this cause of action. The HOA has no plain, speedy, and adequate remedy at law, in that unless this Court issues a writ mandating TJPA to undertake the obligations and responsibilities it is charged with under relevant local and state law, there is no assurance TJPA will perform its mandatory duties.

338. A dispute has arisen between the HOA and TJPA in that the HOA believes and contends, for the reasons set forth above, that TJPA's actions as set forth above were unlawful and invalid. The HOA is informed and believe, and on that basis contends, that TJPA contends in all respects to the contrary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For compensatory and special damages, according to proof at trial but believed to exceed Two Hundred Million Dollars ($200,000,000);

2. For interest thereon at the maximum legal rate;

3. For statutory damages as set forth in California Civil Code section 895 *et seq.*;

4. For expert fees and investigative costs regarding the nature and extent of the violations of standards, defective conditions, resulting damages, and appropriate method of repairing these damages and defective conditions in accordance with *Stearman v. Centex Homes*, 78 Cal. App. 4th 611 (2000), according to proof at trial;

5. For an order that the Millennium Defendants be required to disgorge the profits they have wrongfully obtained and provide the HOA restitution;

6. For injunctive relief to prevent the defendants' conduct that is continuing to cause damage to the HOA and to the Tower and is a nuisance, and to remedy and repair the Tower's defects;

7. For cost of relocation, loss of use, substitute housing, and mitigation expenses;

8. For punitive and/or statutory exemplary damages;

9. For costs of suit and reasonable attorneys' fees incurred herein; and

10. For an award holding all defendants jointly and severally liable for all of the HOA's damages, costs, fees, and interests arising from the defendants' joint tortious conduct.

11. For a writ of mandate commanding TJPA to carry out its obligations to implement the monitoring and mitigation measures set forth in the Mitigation Monitoring and Reporting Program, including specifically Mitigation Measures SG 1, 4 and 5, under which TJPA is obligated to monitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement.

12. For any and all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all triable issues.

Dated: October 13, 2017

DANIEL M. PETROCELLI
VISION WINTER
O'MELVENY & MYERS LLP

By:_____
Daniel M. Petrocelli
Attorneys for Plaintiff

VERIFICATION

I, Steven Mayer, declare:

I am the President of the Millennium Tower Association ("MTA"), a party to this action, and am authorized to make this verification on its behalf. I have read paragraphs 11-13, 19-22, 44, 77-89, and 329-338 of the foregoing PLAINTIFF MILLENNIUM TOWER ASSOCIATION'S THIRD AMENDED COMPLAINT 1) VIOLATION OF CAL. CIV. CODE § 895 ET SEQ.; 2) NEGLIGENCE; 3) BREACH OF EXPRESS WARRANTIES; 4) BREACH OF IMPLIED WARRANTIES; 5) STRICT LIABILITY; 6) NEGLIGENT MISREPRESENTATION; 7) FRAUDULENT MISREPRESENTATION; 8) FRAUDULENT CONCEALMENT; 9) BREACH OF FIDUCIARY DUTY; 10) VIOLATION OF CAL. BUS. & PROF. CODE § 17200 ET SEQ.; 11) INVERSE CONDEMNATION; 12) TRESPASS; 13) NUISANCE; AND 14) VIOLATION OF CAL. CIV. CODE § 832; AND 15) VERIFIED PETITION FOR WRIT OF MANDATE ("Verified Petition for Writ of Mandate") and know its contents. I am informed and believe and on that ground allege that the matters stated in paragraphs 11-13, 19-22, 44, 77-89, and 329-338 of the Verified Petition for Writ of Mandate are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 13, 2017 at San Francisco, California.

Steven Mayer

Steven Mayer

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 2765 Sand Hill Road, Menlo Park, California 94025-7019.

On October 13, 2017, I served true and correct copies of the following document(s):

THIRD AMENDED COMPLAINT FOR: 1) VIOLATION OF CAL. CIV. CODE § 895 ET SEQ.; 2) NEGLIGENCE; 3) BREACH OF EXPRESS WARRANTIES; 4) BREACH OF IMPLIED WARRANTIES; 5) STRICT LIABILITY; 6) NEGLIGENT MISREPRESENTATION; 7) FRAUDULENT MISREPRESENTATION; 8) FRAUDULENT CONCEALMENT; 9) BREACH OF FIDUCIARY DUTY; 10) VIOLATION OF CAL. BUS. & PROF. CODE § 17200 ET SEQ.; 11) INVERSE CONDEMNATION; 12) TRESPASS; 13) NUISANCE; 14) VIOLATION OF CAL. CIV. CODE § 832; AND 15) VERIFIED PETITION FOR WRIT OF MANDATE.

on the following persons at the locations and/or electronic transmission address as follows:

Please see Service List below.

in the manner indicated below:

☐ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the O'Melveny & Myers LLP's office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

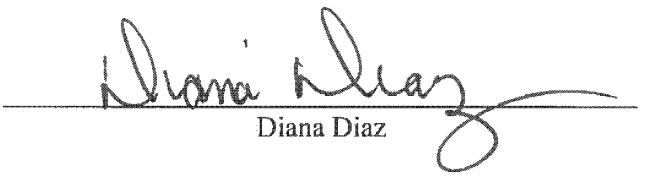
☐ **BY PERSONAL SERVICE**: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.**

☐ **BY OVERNIGHT DELIVERY**: I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the O'Melveny & Myers LLP's office for sending overnight deliveries. In the ordinary course of business, the sealed envelope (&) that I placed for collection would be collected by a courier the same day.

☒ **BY ELECTRONIC MAIL:** I caused the documents to be sent to the person(s) at the electronic service address (es) listed below. Such document(s) were transmitted *via* electronic mail from the electronic address: ddiaz@omm.com ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

☒ **BY ELECTRONIC FILING:** I electronically served the above referenced document(s) through File & ServeXpress. E-Service in this action was completed on all parties listed on the service list with File & ServeXpress. This service complies with the Court's Local Rule 2.10 for allowance of documents to be voluntarily filed and served upon interested parties via File & ServeXpress E-Service System.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 13, 2017, at Menlo Park, California.



Diana Diaz

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Robert L. Mezzetti II Maureen Pettibone Ryan Christopher R. Mezzetti Mezzetti Law Firm, Inc. 31 East Julian Street San Jose, CA 95112 Email: Rob@mezzettilaw.com Maureen@mezzettilaw.com chris@mezzettilaw.com Telephone: (408) 279-8400 Facsimile: (408) 279-8448	Attorneys for Plaintiffs Montana, et al. vs. Mission Street Development LLC, et al. Case No. CGC-17-558649
Alexander M. Weyand Eric C. Shaw Kymberleigh N. Korpus Rebecca M. Hoberg WEYAND LAW FIRM 2490 Mariner Square Loop, Suite 213 Alameda, CA 94501 Email; aweyand@wynlaw.com eshaw@wynlaw.com kkorpus@wynlaw.com rhoberg@wynlaw.com Telephone: (415) 536-2800 Facsimile: (415) 358-4461	Attorneys for Plaintiffs Ying, et al. vs. Transbay Joint Powers Authority, et al. Case No. CGC-17-559210

COUNSEL	PARTY REPRESENTED
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Allan Steyer D. Scott Macrae STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH LLP One California Street, Third Floor San Francisco, CA 94111 Email: asteyer@steyerlaw.com smacrae@steyerlaw.com Telephone: (415) 421-3400 Facsimile: (415) 421-2234	Attorneys for Plaintiffs Maui Peaks Corporation vs. Mission Street Development LLC, et al. Case No. CGC-17-560322

EXHIBIT 6

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA
City Attorney

September 20, 2016

Christopher Jeffries
Partner
Millennium Partners I, Inc.
735 Market Street
San Francisco, CA 94103

Re: **Service of Administrative Subpoena on Millennium Partners I, Inc.**

Dear Mr. Jeffries:

Enclosed please find an administrative subpoena seeking information regarding real estate disclosures tendered to actual purchasers of residential units located at 301 Mission Street, San Francisco, CA 94105 (the "Property").

I have serious concerns that the disclosures required by state law pursuant to California Civil Code Section 1102 et seq. did not contain information about the settling of the Property, and as such, did not accurately inform the purchasers of the more than 400 units of the conditions at the Property.

I trust that you will work to gather the responsive documents and tender them to my office in the manner and within the timelines outlined in the subpoena. Should you have any questions, or wish to discuss this matter further, please contact Deputy City Attorney Yvonne Meré at (415) 554-3874.

Very truly yours,

DENNIS J. HERRERA
City Attorney

cc: United Corporate Services, Inc.
608 University Ave
Sacramento, CA 95825

1 DR. CARLTON B. GOODLETT PLACE, CITY HALL, ROOM 234 SAN FRANCISCO, CA 94102-4682
RECEPTION: (415) 554-3800 · FACSIMILE: (415) 554-4745

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CITY ATTORNEY

ADMINISTRATIVE SUBPOENA

To: **Millennium Partners I, Inc. Which Will Do In California as New York SF Millennium Partners I, Inc. as developers of the property located at 301 Mission Street, San Francisco, CA 94105, also known as the Millennium Tower**

Pursuant to San Francisco Administrative Code §§ 2A.231, California Civil Code §§ 3479, 3480, Code of Civil Procedure § 731, and in furtherance of an investigation, the San Francisco City Attorney's Office hereby commands you, within fifteen (15) days after service, to produce and permit inspection and copying of all documents, records, and other materials described in **Exhibit A**, by mailing such materials, together with a certification, dated and signed under penalty of perjury under the laws of the State of California that the documents provided are true, correct and complete copies of all documents responsive to this Administrative Subpoena, to the following location:

Office of the City Attorney
Attn: Yvonne R. Meré, Deputy City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102

The subpoenaed items are relevant to an investigation of possible violations of law, including California Civil Code §§ 1102 *et seq.*, 3479, 3480 at 301 Mission Street, San Francisco, California 94105, and the documents requested are believed to contain evidence of such violations.

If you have any questions regarding compliance with this subpoena, contact: Yvonne R. Meré, Deputy City Attorney (State Bar No. 173594), Tel. (415) 554-3874, Fax (415) 437-4644.

Please be advised that destruction or concealment of any items requested will result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code § 135.

Failure to comply with the commands of this subpoena may subject you to citation for contempt or other penalties before the Superior Court of the State of California.

Signed in the City and County of San Francisco this 20th day of September 2016.

By: _____
Yvonne R. Meré, as Deputy City Attorney for the City and County of San Francisco

EXHIBIT A

1. Any and all disclosures required by California Civil Code § 1102.6 and tendered to actual purchasers of residential units at 301 Mission Street.

PROOF OF SERVICE

I, Sophia Garcia, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102.

On September 20, 2016, I served the following document(s):

ADMINISTRATIVE SUBPOENA

on the following persons at the locations specified:

United Corporate Services, Inc.
608 University Ave
Sacramento, CA 95825

Christopher Jeffries
Partner
Millennium Partners I, Inc.
735 Market Street
San Francisco, CA 94103

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☒ **BY PERSONAL SERVICE**: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery ☐ is attached** or ☐ **will be filed separately with the court.**

☐ **BY OVERNIGHT DELIVERY**: I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed September 20, 2016, at San Francisco, California.

_____
Sophia Garcia