



October 7, 2019

**Via TrueFiling**

Chief Justice Tani G. Cantil-Sakauye  
and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

**Re: HERO v. City of Los Angeles, No. S257793**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

To ensure that the displacing effects of new development are properly accounted for under the California Environmental Quality Act (CEQA) amid a growing statewide affordable housing crisis, amici curiae Housing Rights Center, Legal Aid Foundation of Los Angeles, National Housing Law Project, Neighborhood Legal Services of Los Angeles County, Public Counsel, Public Interest Law Project, and Western Center on Law and Poverty respectfully request that this Court grant the Petition for Review of plaintiffs Hollywoodians Encouraging Rental Opportunities (HERO), et al.

***Interest of Amici Curiae***

Amici curiae are non-profit public interest law offices which provide free legal services to low-income and vulnerable families, individuals, and communities throughout California. To address the state's affordable housing crisis, amici work to secure equitable development, public participation and inclusive policies to combat the crisis and ensure all Californians have a place to call home in their communities.

***CEQA plays an important role in ameliorating the housing crisis by addressing the displacing effects of new development on low-income residents***

The CEQA review process is integrally related to our work on California's housing crisis. Land use planning and development decisions, in large part, determine what housing may be available for our client populations in the communities in which they live and work, in turn impacting their ability to successfully remain in supportive communities in the face of gentrification, rising rents and a lack of affordable housing supply. As we work to address these drivers of the crisis, it is critical that impacts of proposed development be properly



accounted for and mitigated in the CEQA context, including housing impacts.

This case is an example of an important issue in the CEQA context that has received only cursory examination in many local jurisdictions. CEQA’s treatment of gentrification, development and ensuing displacement has critically important implications for the future of development in California, our ability to resolve the housing crisis, and for California’s status as an inclusive and equitable state. Indeed, contrary to many assertions which have been made in recent years attempting to blame CEQA as a driver of the housing crisis, when properly applied to housing and displacement impacts of projects, CEQA is an important tool in combating the crisis and ameliorating its effects.

Often, jurisdictions merely state that if a project will not physically demolish housing units, it has no displacement effects. Worse still, many jurisdictions incorrectly state that displacement and housing impacts are “social effects” of projects that do not require analysis under CEQA, ignoring the fact that such impacts drive development in other areas. This has predictably pushed many of our low-income clients out of their communities as rents increase in the wake of higher-income and luxury projects fueling gentrification. This, in turn, results in development expanding in new areas to accommodate new residents, low-income residents commuting long distances to reach their jobs after moving, often in older vehicles, reduced transit ridership due to core transit riders being pushed into transit inaccessible areas, and similar effects with which CEQA should surely be concerned. Given our severe lack of adequate affordable housing, any removal of units affordable to low-income residents should give jurisdictions pause and should be examined during the CEQA process, given the likelihood that such activities will drive residents out of their communities and result in a range of significant environmental impacts.

***Review should be granted because the Court of Appeal’s decision improperly allows cities to ignore displacement under CEQA***

In this case, the Court of Appeal held that because residential units at the project site were withdrawn from the rental market under the Ellis Act, no analysis was required of whether conversion of those units to hotel rooms would have a significant impact for CEQA purposes, and that the City properly excluded those units from the baseline when conducting its CEQA review. In reaching its conclusion that the City used a proper baseline in this case, the Court characterized HERO’s argument as “purely speculative” that converting these vacant apartments to hotel rooms could impact the city’s affordable housing stock or result in other significant effects on the environment. In part, this conclusion appears to rely on the fact that the City lacked authority to order the apartments returned to the rental market.



However, the Court ignored the fact that the Ellis Act, and the local regulations and procedures for implementing it in Los Angeles, contain explicit mechanisms for returning such units to the rental market, and addressing their future affordability and the rights of former occupants. In addition, the court's conclusion that HERO's arguments were too speculative to constitute a "fair argument" for CEQA purposes assumed the project would receive the very approvals to be evaluated during the CEQA process. As noted in the Initial Study, the building would not have been permitted to operate as a tourist hotel had those approvals, which included a Conditional Use Permit, been denied, but could have continued to operate as a residential apartment building. The mere fact that the City lacked authority to order the units returned to the rental market, as the court seemed to suggest, did not excuse the City from properly analyzing the impacts of the proposed project on the environment due to its conversion of these units to hotel rooms. As noted in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, "[t]hat a particular mitigation measure may be infeasible or precluded, as by the applicant's vested rights, is not a justification for not performing environmental review; it does not excuse the agency from following the dictates of CEQA and realistically analyzing the project's effects." *Id.* at 325.

Furthermore, the conversion of residential units to tourist hotel use has its own discrete and foreseeable impacts, which should have been analyzed both in terms of the individual project and in relation to similar conversions with respect to cumulative impacts. California's Housing Element Law creates obligations for cities to zone appropriate sites to meet the housing needs of their residents across a range of income levels. See Gov't Code §§65583(a)(1) and (c)(1). When appropriately zoned sites that can accommodate a city's housing needs, such as the apartment building at issue in this case, are converted to a non-residential use, this can trigger legal obligations for the city to rezone other sites such that it is able to accommodate the level of housing need identified through the Housing Element process. Thus, a foreseeable outcome of converting housing units accessible to low-income residents to tourist hotel use, whether vacant or not, is the rezoning of other sites to residential use and increased residential development capacity in other areas to absorb the lost housing units. Alternatively, if adequate re-zoning is not accomplished or is not feasible to address the now unaccommodated portion of the jurisdiction's housing need, low-income residents may be forced to move to other jurisdictions in order to find appropriate residential opportunities. These foreseeable outcomes should have been analyzed during the CEQA process, both in terms of the project's individual significance and the potential for cumulative impacts to result from this and similarly situated projects.



***Review should be granted because the Court of Appeal’s decision opens to the door to “piecemealing” and circumvention of CEQA***

This case also presents a troubling potential for unscrupulous actors to “game the system” and avoid otherwise required CEQA review of a proposed project’s environmental impacts. While we do not allege this has taken place in this specific case, the reasoning of this case that evicting the tenants of a property and removing it from residential use under the Ellis Act effectively “resets” the baseline for CEQA purposes is extremely troubling. There is nothing preventing future property owners from performing such an eviction to effectuate a planned development project, and only thereafter submitting an application for that project, as a way of avoiding CEQA analysis of the displacement impacts of the development. In other words, the decision in this case offers a roadmap for those who would engage in impermissible “piecemealing” to intentionally circumvent the requirements of CEQA to review and analyze the housing impacts of proposed projects.

For the reasons stated above, we support the petition for review in this case.

Respectfully Submitted,

By: /s/ Richard A. Rothschild

Attorney for Amici Curiae HOUSING RIGHTS CENTER, LEGAL AID FOUNDATION OF LOS ANGELES, NATIONAL HOUSING LAW PROJECT, NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY, PUBLIC COUNSEL, PUBLIC INTEREST LAW PROJECT, and WESTERN CENTER ON LAW & POVERTY

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3701 Wilshire Blvd. Suite 208, Los Angeles, CA 90010.

On October 7, 2019, I caused the foregoing document to be served on the interested parties in this action as follows:

**SEE SERVICE LIST**

- By U.S. Mail:** By placing a copy of the document listed above in a sealed envelope in the United States mail to the addressees attached hereto. Under the firm's practice of collection and processing of documents for mailing, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 7, 2019 at Los Angeles, California.



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Amanda Smith

Document received by the CA Supreme Court.

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