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October 11, 2019

Hon. Tani Cantil-Sakauye, Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: Amicus Curiae Letter in Support of Petition for Review – *Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles et al.*; California Supreme Court Case No. S257793 [Appellate Case No. B285553] California Rules of Court, rules 8.500(g) and 8.1125) [Revised]

Dear Chief Justice Cantil-Sakauye:

I am writing on behalf of The Hayward Area Planning Association ("HAPA"), to express its support for the Petition for Review filed by Hollywoodians Encouraging Rental Opportunities in the above-entitled case. A copy of this letter has been served on counsel for the parties to the case, as well as the rendering court of appeal, as set forth in the attached proof of service.[1]

Interest of Amicus Curiae

The Hayward Area Planning Association is a local 501(c)(3) charitable nonprofit planning and environmental protection organization located in and around the City of Hayward, California. HAPA has, on occasion, been forced to initiate litigation relating to various projects proposed in the Hayward area, including specifically the adequacy of CEQA review. HAPA is particularly concerned that this case, as published, would encourage "piecemealing" projects – i.e., carving an overall project into smaller "bite-sized" pieces that, when looked at individually, do not appear to have a significant impact, though the impact from the totality of the project, if viewed together, would be considered significant.

Statement of Facts

This project beqan with a small (18-unit), rent-controlled apartment building in the Hollywood area of Los Angeles. The building was fully occupied by tenants. As initially put forward, the project involved removing the tenants, demolishing the building, and replacing it with a new 39-unit condominium project. (See AR 729, 338.) Under the Ellis Act and the Los Angeles zoning ordinance, the tenants that would be displaced by the demolition would be entitled to compensation – substantially mitigating the impact of their displacement. In addition, while the condominium units would be owned, rather than rented, and would not be subject to rent control, the project would not have decreased the availability of housing in the area.

[1] Rules of Court, Rule 8.1125(a)(5)

The project was approved, based on a mitigated negative declaration taking all the above-referenced factors into account (AR 163), and the initial step in the project, eviction of the then-current tenants under the Ellis Act (because the building was being taken off the rental market) was completed. (AR 522, 2485.) However, the remainder of the project did not happen.

Some two years later, a new developer came forward with a "new" project, converting the same, still-existing building into a "boutique" hotel for tourists. AR 463, 1427-1428.) The City determined that the baseline for environmental review of the project was the vacant building, which was no longer being rented out. (AR 82-83, 484, 520, 522.) Based on that, the City required NO additional environmental review. The above lawsuit challenged that result.

Grounds for Supporting Review

The City conducted its ONLY environmental review on the relatively uncontroversial project of replacing 18 rental units with 39 condominium units. That review was done through a mitigated negative declaration, because while the building was being demolished, it would be replaced by a building containing more housing units, and the displaced tenants would be appropriately compensated under the Eillis Act.

However, the new developer substituted an alternative project that would have impacts not involved in the earlier proposal. The trial court, and the court of appeal, allowed the new developer to divorce the new project from the prior displacement of tenants and removal of the building from the rental market. In doing so, they gave future developers a roadmap for avoiding review of projects displacing tenants and removing buildings from the City's housing supply. All they need to do is get approval for a "stalking horse" project that would displace the tenants and remove the building from the housing market. That project would then, after a suitable pause, be replaced by a "new" project that would no longer have to address the effects on tenants or the housing supply.

In reality, there was really only one project. That project was to: 1) remove the current tenants and take the project off the housing market AND 2) put the property into an alternative, more profitable use. When the condominium project did not move forward, the project should not have been considered ended, but only temporarily stalled, and the environmental review of the "new" project should have, as with the earlier version of the project, encompassed the *entirety* of the project – including the tenant eviction and the removal of the building from the housing market.

From CEQA's earliest days, California's courts have repeatedly cautioned against allowing the "piecemealing" of projects – cutting them up into smaller, apparently innocuous pieces that disguise what would otherwise be recognized as significant environmental impacts. (See, e.g., *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.)

Most recently, in *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, this Court discussed when a project

should be considered a new project requiring environmental review *de novo*, and when it should be considered a successor to an earlier project entitled to tier off of the earlier project's environmental review.

Here, however, the situation is somewhat different. The earlier project – eviction of tenants, removal from the housing market, demolition, and construction of a new building, was carried through only as far as the first two, fully-reversible, components. When the new "second phase" was proposed, it was not considered as such – which would have required setting the baseline for the project as the tenant-occupied rental building. Instead, in the converse to the *Friends of College of San Mateo Garden* case, the City deemed it an entirely new project, and set the baseline as an empty and unutilized building. In doing so, it ignore the impacts of the never-completed condominium project.

If, instead, the project had, pursuant to *Bozung*, been considered as one single entirety, the "new" project would have still had to address the as-yet unmitigated impact of the not-completed earlier version of the project.

CONCLUSION

The court of appeal's published decision in this case is nothing less than a blueprint that will allow future developers to ignore *Bozung*'s mandate that in doing CEQA review, "…environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences. (*Bozung*, supra,13 Cal.3d at pp. 283-284.)

Respectfully submitted,

Stuart M. Flashman
Attorney for Hayward Area Planning Association

cc: All parties served through electronic service provider.

PROOF OF SERVICE BY ELECTRONIC SERVICE

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above-titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On October 11, 2019, I served the within AMICUS CURIAE LETTER [modified] on the parties listed below by electronic service via the court's electronic service provider:

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I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on October 11, 2019.

Stuart M. Flashman