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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE

10 COALITION FOR SAFE COASTAL
11 DEVELOPMENT, a California non-profit
12 corporation, CHARLES ROSIN, a Los
Angeles resident and taxpayer,

13 Plaintiffs,

14 v.

15 CITY OF LOS ANGELES, a municipal
16 corporation, LOS ANGELES HOUSING
17 DEPARTMENT, LOS ANGELES
18 TRANSPORTATION COMMISSION,
19 LOS ANGELES DEPARTMENT OF
TRANSPORTATION, divisions of the
City of Los Angeles, ANN SEWILL,
SELETA REYNOLDS, in their official
capacities, and DOES 1-25,

20 Defendants.

21 HOLLYWOOD COMMUNITY
22 HOUSING CORPORATION, VENICE
23 COMMUNITY HOUSING
24 CORPORATION, VENICE DELL GP,
LLC, California corporations, VENICE
DELL, LP, a California Limited
Partnership, and ROES 1-25,

25 Real Parties in Interest.

Case No. 22STCP03359

[Assigned for all purposes to the Honorable
Judge James C. Chalfant – Dept. 85]

**RESPONDENTS AND REAL PARTIES IN
INTEREST'S BRIEF IN OPPOSITION TO
PETITIONERS' OPENING TRIAL BRIEF**

*[Submitted concurrently with Declaration of
Benjamin Hanelin; Request for Judicial Notice]*

Filing Date: September 13, 2022

Hearing: June 4, 2024
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1 **I. SUMMARY OF ARGUMENT**

2 Petitioners Coalition for Safe Coastal Development and Charles Rosin (collectively,
3 “Petitioners”) seek to invalidate a Disposition and Development Agreement (“DDA”) for a 100%
4 affordable housing project (the “Project”) based on Respondent City of Los Angeles’s (“City”)
5 alleged non-compliance with two sections of the City’s Administrative Code (“LAAC”)—(1) a Code
6 section requiring that a public hearing be held and findings made in connection with the conveyance
7 of an interest in City-owned property to a developer of an affordable housing project and (2) a Code
8 section concerning the City’s Board of Transportation Commissioners’ (“Transportation
9 Commission”) authority to “manage” City-owned off-street parking lots. (The property to be
10 developed with the affordable housing project is a City-owned parking lot at the present time.)
11 However, Petitioners fail to cite to any section of the City’s Code that governs the City Council’s
12 consideration and approval of a DDA. Instead, Petitioners rely on Code sections that relate to actions
13 by the City that have not yet occurred. Specifically, no interest in real property has been conveyed
14 by the City to the Real Parties in Interest Hollywood Community Housing Corporation; Venice
15 Community Housing Corporation; Venice Dell, GP; and Venice Dell, LP (collectively, “Real
16 Parties”), and the ground lease that would convey such an interest has not yet been negotiated,
17 approved or signed, and will go to the full City Council for hearing and consideration at some future
18 date. Similarly, the Project will be considered and reviewed by the Transportation Commission at a
19 publicly noticed meeting in the future. Those undeniable facts were confirmed by City employees
20 who were deposed by Petitioners, one of whom as the person most knowledgeable. Yet those
21 undeniable facts are omitted from Petitioners’ opening trial brief. Accordingly, Real Parties and
22 Respondents City of Los Angeles (“City”), Ann Sewill and Seleta Reynolds (collectively,
23 “Respondents”) respectfully request that the Court deny Petitioners’ First Amended Complaint and
24 Petition (“Amended Petition”) in its entirety.

25 **II. BACKGROUND**

26 **A. Project Description**

27 The Project site is currently a City-owned asphalt parking lot and four-unit multi-family
28

1 residential building located in the Venice neighborhood of the City. (AR00024.)¹ A small four-unit
2 residential building is located on a part of the Project site. The site is bisected by the Grand Canal,
3 which is part of the Venice Canal system. (AR01150-1151.) The subject property is also located
4 within close proximity to local and regional public transit opportunities and is surrounded by a mix
5 of commercial, retail, and residential uses. (AR01135; AR01145.) As part of the Los Angeles
6 Housing Department’s (“LAHD”) Public Land Development Program, the City identified the Project
7 site as an Affordable Housing Opportunity Site. (AR00611.)

8 The Project will include 140 affordable residential units to be occupied by 68 homeless
9 households and 68 low-income households (and 4 units for on-site managers), which will
10 substantially increase the amount of much-needed low-income and permanent supportive housing
11 and alleviate the City’s housing crisis. (AR00189.) In addition, the Project will provide a number of
12 social services and support for tenants, including assistance with employment and educational
13 pursuits and on-site therapeutic and community groups for housing support and stability, mental
14 health support, harm reduction and recovery. (AR00945.) Approximately 685 square feet of the
15 Project will be dedicated to tenant-supporting social service office uses. (AR00045.) Moreover, the
16 City made a finding that development of the Project “is in the vital and best interests of the Project
17 Area and the health, safety, morals and welfare of the residents therein, and is in accord with the
18 public purposes and provisions of applicable state and local laws” and will rely upon the Project to
19 meet its projected housing need for lower-income households. (AR00086.)

20 **B. Entitlement History**

21 This Project has been carefully reviewed by the City, various stakeholder groups in the
22 community, and other interested persons. LAHD, the Office of the City Administrative Officer
23 (“CAO”), and the Homelessness and Poverty Committee (“HPC”) all evaluated the Project, and each
24 recommended that the City Council authorize LAHD to negotiate and execute the DDA. Four staff
25 reports and transmittals set forth the City’s detailed analysis in support of the DDA. (See AR00610-
26 771 [April 27, 2022 LAHD Transmittal]; AR00772-774 [May 20, 2022 CAO Report]; AR00938-996

27 ¹ Citations to the Quasi-Administrative Record of the City’s proceedings for approval of the
28 Project’s DDA are by the symbol “AR” followed by the page number.

1 [June 3, 2022 CAO Report]; AR01039-10340 [June 9, 2022 HPC Report].) The Project also required
2 legislative and quasi-adjudicative approvals, for which the City held three hearings before the
3 Deputy Advisory Agency, Planning Commission, and City Council, with hours of public testimony.
4 (AR01211.) Additionally, the City and Real Parties engaged in several years of community
5 engagement, reaching thousands of residents and interested persons with over one hundred activities
6 including more than ten large-scale public events designed to “elevate[] the voices and ideas of low-
7 income people.” (AR05684; Declaration of Benjamin Hanelin [“Hanelin Decl.”], Ex. A at AR34357;
8 *id.*, Ex. B at AR15488-94.) This extensive review process culminated in execution of the DDA
9 between the City and Real Parties on June 30, 2022. (AR00175-176.) However, no ground lease of
10 the Project site has been negotiated, approved or executed yet. (Petitioners’ Supplemental Evidence
11 [“Pet. Supp. Evid.”], Ex. 2 at 164:21-165:4.)

12 In an abundance of transparency during the DDA approval process, the City made available
13 information described in LAAC Section 7.27.3², even though it was not required to do so at that
14 time. (See Section III(A)(2), *infra*, at pp. 9-13.) For example, the City commissioned an appraisal for
15 the Project in 2020 that provided a fair market value appraisal for the Project site, which was
16 subsequently used in the “7.27.3 Reuse Analysis” report discussed at length by Petitioners; another
17 appraisal was also completed in Summer 2023. (AR00008-22; see LAAC §§ 7.27.3(a) & (d).) In
18 addition, the DDA specifically identified the conditions precedent imposed by the City for the
19 eventual conveyance of the property (AR00100-103; see LAAC § 7.27.3(c)), and the 7.27.3 Reuse
20 Analysis estimated the increased development costs to be incurred by the Real Parties as a result of
21 compliance with those conditions (AR00014-15; AR00987; see LAAC § 7.27.3(c)). The 7.27.3
22 Reuse Analysis also detailed how the Project will contribute to the City’s economic development
23 and provides “all supporting facts and materials relied upon” in such explanation. (AR00021; see
24 LAAC § 7.27.3(e).)

25 Aside from the DDA, the Project also underwent a thorough review process for other various
26 entitlements, including a CEQA statutory exemption, vesting tentative tract map, coastal

27 _____
28 ² A copy of LAAC Section 7.27.3 is included in Exhibit B to Petitioners’ Request for Judicial
Notice (“RJN”).

1 development permit, site plan review, Mello Act compliance, project permit compliance, general
2 plan amendment, zone change, height district change, and specific plan amendment, and is pending
3 Coastal Permit approval. (AR00942.) Petitioners brought two other lawsuits (which were
4 consolidated) seeking to set aside many of these discretionary land use approvals and challenging the
5 City's determination that the Project was statutorily exempt from environmental review under
6 CEQA. (Hanelin Decl., ¶ 4.) This CEQA litigation is currently pending before Judge Fruin; trial
7 recently concluded in March. (*Ibid.*) Petitioners also filed multiple lawsuits claiming violations
8 under the Brown Act, which have been dismissed. (*Id.*, ¶¶ 2, 3.)

9 **C. Procedural History**

10 On September 13, 2022, Petitioners filed the instant litigation against the City and Real
11 Parties challenging the City's approval of the Project's DDA. Petitioners filed their operative
12 Amended Petition on February 2, 2023, alleging that (1) the City was required to seek
13 Transportation Commission approval of the Project's parking component under LAAC Section
14 22.484(g); (2) the City Council was required to approve the DDA under LAAC Sections 22.606(c)
15 and 7.27.3; and (3) a taxpayer injunction should issue as a result of the City's alleged noncompliance
16 with these provisions.

17 In addition to a Quasi-Administrative Record, the contents of which were collectively agreed
18 upon by the parties, limited discovery was also conducted. (See Opening Brief at p. 5, fn. 2.)
19 Petitioners deposed two City witnesses in February 2024—Mr. Husting in his capacity as the head of
20 the Los Angeles Department of Transportation's ("LADOT") Bureau of Parking Management, and
21 Mr. Huynh in his capacity as LAHD's Assistant General Manager and as the City's Person Most
22 Knowledgeable ("PMK"). (See Pet. Supp. Evid., Exs. 2 and 8.)

23 **III. ARGUMENT**

24 **A. LAAC Sections 7.27.3 and 22.606.2(c) Are Only Applicable at the Time of
25 Conveyance of an Interest in Real Property.**

26 **(1) The Sale of City-Owned Property for Affordable Housing Projects
27 Pursuant to the City's Administrative Code.**

28 Section 7.27 of the City's Administrative Code governs the sale, conveyance, or exchange of

1 City-owned land. (Petitioner's RJD, Ex. B.) Further, Section 7.27.3 authorizes LAHD to convey
2 City-owned property below its fair market value for the purposes of affordable housing development
3 and sets forth the procedure and requirements for such conveyance. (*Ibid.*) Relatedly, Section 22.606
4 of the Administrative Code describes the duties and powers of LAHD, which include disposition of
5 real property for affordable housing development pursuant to Section 22.606.2. (Petitioner's RJD,
6 Ex. B.)

7 **(2) The DDA Is Not a Conveyance of An Interest in Real Property.**

8 Contrary to Petitioners' claim that Section 22.606.2(c) compels compliance with the
9 procedures set forth in Section 7.27.3 when the DDA is executed, the City is only required to comply
10 with these sections ***upon execution of the ground lease***, as the DDA is not a conveyance of an
11 interest in real property. This is confirmed by the unequivocal language of the relevant Code
12 sections, the DDA, testimony from City witnesses, and evidence relied upon by Petitioners.

13 The plain language of Section 7.27.3 expressly states that conveyance is by sale or lease—
14 not by DDA as Petitioners contend. Section 7.27.3 provides, in relevant part:

15 With the exception of those properties subject to Section 7.33.2, et seq.
16 of this Code, the Los Angeles Housing Department is authorized to
17 ***convey*** any interest owned or controlled by the City in any real
18 property below its fair market value, subject to the Council making a
19 finding that the conveyance at the price with the terms and conditions
imposed thereon serves a public purpose. ***Such conveyance may be
made by either sale or lease***; however, the ***sale or lease*** shall be first
approved by the City Council after public hearing and shall be subject
to approval by the Mayor.

20 ***Any disposition of real property, whether by sale or lease***, which is
21 made at a price below fair market value shall be supported by findings
and an appraisal setting forth the following . . .”

22 (Petitioners' RJD, Ex. B, emphasis added.)

23 Section 22.606.2(c) also plainly establishes that conveyance is separate and distinct from a
24 DDA. This provision states, in relevant part:

25 **Conveyance of City Interests in Real Property.** The Department is
26 authorized to convey any interest owned or controlled by the City in
27 real property at its fair reuse value for the public purposes and
objectives of this chapter in accordance with the procedures set forth
in Section 7.27.3 of this Code. Any such ***conveyance shall be made
pursuant to one or more agreements*** requiring the development, use

1 and maintenance of such real property for affordable housing
2 purposes. Such *agreement(s) shall additionally require as a condition*
3 *precedent to the conveyance* that one or more deed restrictions be
4 recorded against the conveyed interest restricting the development and
use, and requiring the maintenance of such real property, so as to
insure that the affordable housing purpose for which the conveyance
was made is fulfilled for such period of time as is determined to be
appropriate . . .

6 (Petitioners' RJN, Ex. B, emphasis added.) Section 22.606.2(c) provides that there must be "one or
7 more agreements" in place, such as the subject DDA, requiring the property's "development, use and
8 maintenance... for affordable housing purposes", in order for the City to be able to avail itself of the
9 conveyance procedure provided in Section 7.27.3. Section 22.606.2(c) does not provide that such an
10 agreement is the vehicle for disposition, but rather that it is separate and distinct from the Section
11 7.27.3 conveyance. Indeed, Section 7.27.3 expressly provides that "[s]uch *conveyance* may be made
12 *by either sale or lease.*" (Petitioners' RJN, Ex. B, emphasis added.) Clearly, the statutory
13 requirement to follow the procedures set forth in Section 7.27.3, by its own terms, exists at the time
14 of conveyance, which is made clear by the plain language of this section, and in particular the use of
15 the words "convey," "conveyance," "lease," and "disposition" throughout. The agreement that will
16 convey the interest in the Project site to the Real Parties will be the ground lease and not the DDA.
17 This is consistent with the well-established legal principle that only a *lease* of real property
18 constitutes a conveyance of an estate in land. (*Valley Invs. v. Bancamerica Commercial Corp.* (2001)
19 88 Cal.App.4th 816, 822.)

20 Critically, nowhere in the DDA does it purport to convey an interest in real property, nor do
21 Petitioners identify any such language. To the contrary, the DDA contains numerous provisions that
22 contemplate the *future* conveyance by way of a ground lease. For instance, Section 1.2 of the DDA
23 defines "Ground Lease" as the "99-year ground lease with respect to the Site *to be entered into*
24 between the City, as ground lessor, and Developer, as ground lessee, subject to and contemplated in
25 this agreement . . ." (AR00091, emphasis added.) The use of the phrase "to be entered into" indicates
26 that conveyance by lease has not yet occurred. Section 1.1(b) similarly establishes that conveyance is
27 a future occurrence by stating that "[t]he Developer *will lease* the Site for a Ninety Nine (99) year
28 term . . ." (AR00084, emphasis added.) Additionally, Section 3.1 sets forth conditions that must be

1 satisfied ***prior to conveyance*** via ground lease: “Subject to the terms and conditions of this
2 Agreement, the City ***shall*** execute and deliver the Ground Lease to the Site to Developer for
3 redevelopment and the provision of affordable housing. ***The City shall not be obligated to convey***
4 ***title*** to the Site to Developer, and the Close of Escrow shall not occur, ***if an Event of Default has***
5 ***occurred*** and has not been cured within the applicable cure period, if any.” (AR00100-103,
6 emphasis added; see AR00105 [“Provided the conditions precedent in Section 3.1 of this Agreement
7 have been satisfied, upon the terms, covenants and conditions set forth in this Agreement, the City
8 agrees to lease and convey the leasehold interest in the Site to Developer...”].) Section 3.9(a) again
9 confirms that conveyance has not yet occurred: “Subject to any extensions of time mutually agreed
10 upon in writing between the City and Developer, ***the conveyance of leasehold interest to Developer***
11 ***pursuant to the Ground Lease shall be completed upon the occurrence of all of the following*** (the
12 “Closing Date”) (i) not sooner than the satisfaction of all Conditions Precedent to the Close of
13 Escrow set forth in Section 3.1 of this Agreement; and (ii) not later than the date specified for the
14 scheduled Closing Date in the Schedule of Performance.” (AR00114, emphasis added.)

15 In fact, in their Opening Brief, Petitioners acknowledge that Section 7.27.3 is presently
16 inapplicable. Petitioners state that “compliance with Section 7.27.3 is required[] when LAHD
17 **proposes to convey** any real property interest . . .” (Opening Brief at p. 15, underline added, italics
18 and bold in original.) Petitioners’ deliberate inclusion of the word “proposes” reveals an
19 understanding that conveyance has not yet occurred and thus Section 7.27.3 requires nothing of the
20 City at this point. Likewise, the City’s Housing Development Land Conveyance Policy cited by
21 Petitioners undermines their argument because it provides that conveyance is by sale or by lease.
22 (Opening Brief at pp. 15-16; Pet. Supp. Evid., Ex. 10 at p. 4.) The policy is described as “a
23 standardized framework as to how real property is to be conveyed” and requires that the Los Angeles
24 Housing Department “shall utilize long-term ground leases” where feasible. (*Ibid.*)

25 In response, Petitioners claim that the DDA is the “final discretionary step.” (Opening Brief
26 at p. 16.) This statement is legally and factually incorrect. The DDA does not bind the City Council
27 to convey the property to the Real Parties, but rather contains a provision for the City Council’s
28 retention of its authority and obligations under applicable law. Section 11.23 of the DDA explicitly

1 provides that nothing contained in the DDA restricts or limits “any of the City’s duties, obligations,
2 rights or remedies . . . pursuant [to its ordinances] or the general police powers, rights, privileges,
3 and discretion of the City . . . including, without limitation, the right under law to make and
4 implement independent judgments, decisions and/or acts with respect to planning, development
5 and/or redevelopment matters . . . ***whether or not consistent with the provisions of this Agreement.***”
6 (AR00172-173, emphasis added.) In addition, the DDA expressly provides in Section 3.1(v) that one
7 Condition Precedent, among others, is an “Appraisal or Other Determination of Value” by which
8 “[t]he City shall have determined, ***in their sole discretion***, that the City Rent payable by Developer
9 is acceptable.” (AR00101, emphasis added.) Mr. Huynh, the City’s PMK, further confirmed that
10 “nothing in the Venice Dell DDA restricts or waives the [C]ity’s duty to follow its own ordinances
11 among other things,” which includes compliance with LAAC Section 7.27.3. (Pet. Supp. Evid., Ex. 2
12 [Huynh Depo. Tr.] at 240:9-21.) Petitioners fail to address Mr. Huynh’s deposition testimony in their
13 Opening Brief, even though they, as the challenging party, are obligated to “lay out the evidence
14 favorable to the other side and show why it is lacking. Failure to do so is fatal.” (*South County*
15 *Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330; *Citizens for*
16 *Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 635.)

17 When the Project later reaches the stage of ground lease consideration, it will then be
18 presented to the City Council for approval in compliance with Section 7.27.3 before “full
19 conveyance” occurs. (Pet. Supp. Evid., Ex. 2 [Huynh Depo. Tr.] at 240:22-241:10; see *id.* at 164:21-
20 165:4 [“we have to go back to council to receive authority to execute the ground lease”].) City
21 Council consideration is a necessary and expected next step, as “[the City] Council is ultimately the
22 key decision-maker. [The] full council[’s] as well as the [M]ayor[’s] concurrence is what . . . staff
23 seek[] to get all of the necessary approvals.” (*Id.* at 188:13-16.) It is at this point that the City
24 Council’s decision will be subject to the “substantial evidence” standard of review and the findings
25 required under LAAC Section 7.27.3 must be supported by “substantial evidence,” as to be
26 determined by the City Council. (See Code Civ. Proc., § 1094.5; *Topanga Assn. for a Scenic*
27 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.)

28 The City’s interpretation of its own Administrative Code is both reasonable and legally

correct. That interpretation of its own ordinance is “‘entitled to deference’ in [a court’s] review of the meaning or application of the law.” (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434. Well settled law holds that “an agency’s view of the meaning and scope of its own . . . ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.” (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193.) Petitioners, however, have failed to show that the City’s interpretation of its Code is “clearly erroneous.” (See *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154 [“the petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085”].)

(3) The City's Fair Reuse Report Will Be Subject to a Public Hearing at a Future Date.

Petitioners also complain that the City’s Fair Reuse Value Report must be subjected to a “public hearing **before the agency enters into a binding sale or lease of the real property.**” (Opening Brief at p. 16, emphasis in original.) However, a “binding sale or lease of the real property” has not yet occurred. The City’s Housing Development Land Conveyance Policy recommends that “**before real property is sold or ground leased**, a Financial Gap Analysis or a Fair Reuse Analysis. . . will be prepared,” as opposed to doing so at the time of seeking approval to enter into a DDA. (Pet. Supp. Evid., Ex. 10 at p. 4 and Attachment 3.) As discussed above, the DDA contains a provision that ensures the City Council will retain all of its “duties, obligations, rights or remedies . . .” (AR00172-173; see Section III(A)(2), *supra*, pp. 9-13.) Additionally, the DDA does not “irrevocabl[y] commit[]” (Opening Brief at p. 17) the City to lease the property to the Real Parties because there still must be “substantial evidence” to support the findings required by Section 7.27.3 when the City Council makes a final decision on the ground lease. (See Code Civ. Proc., § 1094.5; *Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at pp. 514-515.) The DDA ensures that the City’s decision concerning compliance with Section 7.27.3 is one of the City’s obligations retained and required by Section 11.23 of the DDA. (AR00172-173.) When the Project’s ground lease is scheduled for public hearing before the City Council at a future date, the Fair Reuse Revalue Report will then be subject to public review; it is not required at this

1 stage.

2

3 **(4) The Appraisal and Fair Reuse Report Will Similarly Be Made Available**

4 **to the Public at a Future Date.**

5 Petitioners further allege that the City failed to comply with Sections 22.606.2 and 7.27.3 by

6 seeking authority to negotiate and execute the DDA without releasing the appraisal or the Fair Reuse

7 Value Report for the Project. (Opening Brief at pp. 17-20.) Again, Petitioners misinterpret the

8 appropriate time for compliance with these provisions, which is conveyance by ground lease. When

9 the City Council considers the ground lease at a later date, the appraisal and Fair Use Report will be

provided as part of the publicly available staff report prior to the public hearing.

10 Because Sections 22.606.6(c) and 7.27.3 are inapplicable at this time, Petitioners' claims

11 challenging the DDA must be dismissed. (See *Pacific Legal Foundation v. California Coastal Com.*

12 (1982) 33 Cal.3d 158, 170 [challenge to Coastal Commission's coastal access guidelines dismissed

13 given absence of a "ripe" controversy].)

14

15 **B. LAAC Section 22.484(g) Does Not Require Transportation Commission**

16 **Approval at the DDA Stage.**

17 Petitioners argue that LAAC Section 22.484(g) delegates the City Council's authority over

18 public off-street parking to the Transportation Commission and therefore requires the Commission's

19 approval of the "non-monetary transfer of Parking Lot No. 731" from LADOT to LAHD.³ (Opening

Brief at pp. 12-14.) This claim fails for three reasons.

20 First, it is elementary government law that the City Council's authority cannot be usurped by

21 subordinate commissions such as the Transportation Commission. As Petitioners acknowledge, Los

22 Angeles is a charter city. (Opening Brief at p. 9.) "A chartered city under the 'home rule' provisions

23 of article XI, section 5, of the California Constitution has *complete powers over municipal affairs*

24 and unless limited by the charter, *the city council may exercise all powers not in conflict with the*

25 *California Constitution.*" (*Miller v. City of Sacramento* (1977) 66 Cal. App. 3d 863, 867-868,

26 emphasis added [holding that "no restriction on the [chartered City of Sacramento]'s power may be

27

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³ A copy of LAAC Section 22.484 is included in Petitioners' RJD, Ex. B.

1 implied”].) The City Charter specifically endows the City Council with (1) “all legislative power of
2 the City except as otherwise provided in the Charter” and (2) the power to provide for public
3 improvements.⁴ (L.A. City Charter §§ 240 & 247; Respondents and Real Parties’ RJD, Ex. 1.) The
4 City’s Administrative Code similarly provides that: “Except as otherwise in the Charter specifically
5 provided, the Council shall have full power to pass ordinances upon any subject of municipal
6 control, or to carry into effect any of the powers of the City.” (LAAC § 2.14; Respondents and Real
7 Parties’ RJD, Ex. 1.) And as the City’s PMK testified, “[the City] Council is ultimately the key
8 decision-maker.” (Pet. Supp. Evid., Ex. 2 [Huynh Depo. Tr.] at 188:13-16.) Consistent with these
9 provisions, LADOT and the Transportation Commission were created by Division 22 of the
10 Administrative Code as “Departments, Bureaus And Agencies Under The Control Of The Mayor
11 And Council.” (LAAC Division 22; Petitioners’ RJD, Ex. B.)

12 Second, the City Council did not delegate its power to the Transportation Commission
13 concerning the conveyance of an interest in City-owned property or the transfer of jurisdiction of
14 City-owned property between City departments. Nothing in the City Charter grants the initial or
15 ultimate decision-making authority to the Transportation Commission to dispose, or transfer
16 jurisdiction, of City-owned parking lots, regardless of whether they are operated by DOT. Notably,
17 when the City does delegate authority to a City department to acquire and convey interests in real
18 property owned by the City, that transfer of authority is express and unambiguous. For example, City
19 Charter Section 534 delegates “full control” over library property to the Board of Library
20 Commissioners: “Acquisition of real property by the City for library sites shall first be approved by
21 the Board of Library Commissioners. ***The board shall have full control*** over all library sites and
22 none of these sites shall be devoted to any other purpose in whole or in part without permission from
23 the board.” (Respondents and Real Parties’ RJD, Ex. 1, emphasis added.) Similarly, the City Charter
24 requires that transfer of public recreation sites “***shall require a resolution of the [Board of***

25 _____
26 ⁴ While “public improvement” is not defined in the Los Angeles City Charter or
27 Administrative Code, the definition used by California courts in the context of eminent domain is
instructive: “[A] public improvement is a project or use that involves ‘(1) a deliberate action by the
28 state (2) taken in furtherance of public purposes.’” (*Mercury Cas. Co. v. City of Pasadena* (2017) 14
Cal. App. 5th 917, 928.) Under this standard, the Project is clearly a “public improvement.”

1 **Recreation and Park Commissioners]**, approved by the Council by ordinance . . .” (L.A. City
2 Charter § 594(d)(1), emphasis added; Respondents and Real Parties’ RJN, Ex. 1.) And regarding the
3 Proprietary Departments of Airports, Harbor, and Water and Power, “each board shall have the
4 power to grant and set the terms and conditions for any . . . lease concerning any property under its
5 control . . .” (L.A. City Charter § 605; see *id.*, § 606; Respondents and Real Parties’ RJN, Ex. 1.)
6 City Charter Section 675(d)(2) also specifically grants the Board of Water and Power
7 Commissioners decision-making authority over its property: “Subject to the water and water rights
8 of the City set forth in Section 673, no real property or any rights or interests in real property held by
9 the board shall be sold, leased or otherwise disposed of, or in any manner withdrawn from its
10 control, unless by written instrument authorized by the board, and approved by the Council.”
11 (Respondents and Real Parties’ RJN, Ex. 1.)

12 The City Council could have used similar language unequivocally delegating full authority
13 over the City’s off-street parking lots to the Transportation Commission, but chose not to do so. (See
14 *Artus v. Gramercy Towers Condo. Assn.* (2018) 19 Cal. App. 5th 923, 945 [“It is not the role of the
15 courts to add statutory provisions the Legislature could have included, but did not.”].) Petitioners
16 argue that the City did delegate such authority to the Transportation Commission, citing to Section
17 22.484(g)(A)(7) of the Administrative Code. That section provides that the Transportation
18 Commission has “the power, duty, and responsibility of coordinating, directing, and managing all
19 matters respecting ***the acquisition, and thereafter the management***, of all public off-street parking
20 places by the City.” (Petitioners’ RJN, Ex. B, emphasis added.) As a threshold matter, there is no
21 “acquisition” at issue, as the Project site is presently owned by the City. (AR00024.) Moreover, this
22 provision only concerns the Transportation Commission’s ***management*** power—not the exclusive
23 power to transfer jurisdiction between City departments, or to dispose, of City-owned property.
24 Instead, Section 22.606.1 provides that ***LAHD*** “shall have charge, superintendence and control of all
25 City-owned real property, the use of which currently is or is intended to be for affordable housing
26 development purposes, projects or activities.” (Petitioners’ RJN, Ex. B.)

27 Third, the City and Real Parties have not yet negotiated an agreement regarding the
28 ownership, construction, and operation of the public parking portion of the Project, and thus no

1 Transportation Commission consideration, much less approval, is required at this time. Mr. Huynh,
2 as the City's PMK, testified that the "nonfinancial transfer of jurisdiction" from LADOT to LAHD
3 has not yet occurred. (Pet. Supp. Evid., Ex. 2 [Huynh Depo. Tr.] at 181:8-17.) Rather, such transfer
4 "typically happens after the approval of the ground lease by [C]ouncil and we work toward the full
5 conveyance of the property. That's when we typically procedurally go through that process to
6 transfer the property over to LAHD." (*Id.* at 181:19-23.) Mr. Huynh also confirmed that prior to
7 seeking approval for the ground lease, the Project (or some agreement related to the Project's
8 parking component) will be put before the Transportation Commission for consideration. (*Id.* at
9 189:16-23.) The head of LADOT's Bureau of Parking Management, Mr. Husting, repeatedly
10 testified to this procedure during his deposition. (Pet. Supp. Evid., Ex. 8 [Husting Depo. Tr.] at
11 68:12-19, 73:23-74:1, 78:6-11, 93:24-94:12, 94:13-23, 116:14-117:1.) Critically, Section 22.484(g)
12 does not specify when the Project needs to be put before the Transportation Commission. (See *id.* at
13 116:14-117:1.) Again, Petitioners omit this key testimony from their Opening Brief. (See *South*
14 *County Citizens for Smart Growth v. County of Nevada, supra*, 221 Cal.App.4th at p. 330.)
15 Petitioners also fail to cite any authority requiring Transportation Commission consideration at this
16 stage, and there is none.

17 **C. There Is No Basis for the Issuance of a Taxpayer Injunction.**

18 Petitioners' taxpayer injunction claim is derivative of their claim that the City violated
19 LAAC Sections 7.27.3 and 22.484(g). As set forth in detail above, the City has not violated these
20 sections, and therefore, a taxpayer injunction is not warranted.
21

22 **IV. CONCLUSION**

23 Petitioners' claims challenging the DDA must be dismissed since the claims are based on
24 Code sections concerning actions by the City that have not yet taken place. The Project is currently
25 at the DDA stage, and no interest in City-owned land has yet been conveyed. City witnesses also
26 testified that: (1) the Project will go to the City Council for approval of the ground lease, at which
27 time the procedural requirements of LAAC Sections 22.606.2(c) and 7.27.3 would apply; and (2) the
28 Project will go before the Transportation Commission for consideration pursuant to LAAC Section

1 22.484(g). Accordingly, Respondents and Real parties respectfully request that the Court deny the
2 Amended Petition in its entirety.

3 Dated: April 15, 2024

4 Respectfully submitted,

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6 YTRAN L. HOANG
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8 By: 

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15 Dated: April 15, 2024

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PROOF OF SERVICE

I, Heather Thai, declare:

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 350 South Grand Avenue, 51st Floor, Los Angeles, CA 90071.

On April 15, 2024, I served the document(s) described as **RESPONDENTS AND REAL PARTIES IN INTEREST'S BRIEF IN OPPOSITION TO PETITIONERS' OPENING TRIAL BRIEF** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows: See Attached Service List

- BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 350 South Grand Avenue, 51st Floor, Los Angeles, CA 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I caused the placing for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 350 South Grand Avenue, 51st Floor, Los Angeles, CA 90071.
- BY OVERNIGHT DELIVERY.** On this date, I placed the **UPS NEXT DAY AIR** (or other overnight couriers) package for overnight delivery in a box or location regularly maintained by **UPS** (or other overnight couriers) at my office or I delivered the package to an authorized courier or driver authorized by **UPS** (or other overnight couriers) to receive documents and/or packages. The document(s) was/were placed in a sealed envelope or package designated by **UPS** (or other overnight couriers) with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served at the address(es) shown above/attached list, at the office address(es) as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence.
- BY HAND DELIVERY:** By giving a true copy(ies) thereof in sealed envelope(s) to ACE Messenger and Attorney Service, Inc. for hand delivery to: (SEE ATTACHED SERVICE LIST)
- BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT:** On this date, I transmitted the above-mentioned document(s) by electronic mail transmission with attachment to the parties at the electronic mail address set forth on the attached Service List.
- [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2024, at Los Angeles, California.

Heather Thai

Heather Thai

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