FIX THE CITY

Laura Lake, Ph.D., Board Secretary, Fix the City

CERTIFIED MAIL/RETURN RECEIPT

Email: Daniel.Schneidereit@lacity.org

Second mailing to replace lost certified, return receipt package, at the request of Daniel Schneidereit, LADBS

November 10, 2020

RE: REVOCATTION OF **BUILDING PERMIT APPLICATION #16010-20000-02308** AND CERTIFICATE OF OCCUPANCY/TEMPORARY CERTIFICATE OF OCCUPANCY FOR **1751 MALCOLM AVENUE & 1772 GLENDON AVENUE**

Daniel Schneidereit, LADBS Seismic Safety Manager

201 N. Figueroa Street, 12th Floor

Los Angeles, CA 90012

Dear Mr. Schneidereit:

Fix the City is a nonprofit advocacy organization for public safety and services in Los Angeles. We respectfully call upon the Building and Safety Commission to revoke all approvals for **Building Permit #16010-20000-02308 and deny a Certificate of Occupancy and or revoke any Temporary Certificate of Occupancy for 1751 Malcolm Avenue/1772 Glendon Avenue,** as authorized by LAMC 98.0302.(1(b)(2).

This appeal package and Appeal Form supplements Fix the City's Appeal to the Board of Building and Safety Commissioners (Form PC-Build.Mod 00 (Rev.09-11-2019), which is attached. The fee has already been paid. Proof of receipt of the original appeal has been provided. You have stated to me that you never received this appeal, and requested that I resubmit, without a new fee, with you as the recipient. This mailing constitutes Fix the City's response.

In addition, our board has hired a licensed geologist, Kenneth Wilson (Wilson Geosciences, Inc), to review the record. He concluded in his attached report (Exhibit H), that the seismic approvals do not follow state and city requirements. We therefore repeat our request to revoke the certificate of occupancy or temporary occupancy based on the substantial evidence in the record. Mr. Wilson's c.v. is attached in Exhibit I.

Mr. Wilson's review, which is enclosed, flags several errors in the approval process for this building that support a revocation. The key safety concerns addressed in this complaint are:

- There is no evidence in the record supporting the reduction from 10 to 20-feet no-build area in the absence of additional data points to determine fault orientation, other than a private meeting between Mr. Schneidereit and the applicant. No new investigation was provided to support reducing the no-build area.
- A one-foot cantilever does not mitigate an estimated 3-6-foot displacement.
- The no-build area for 1751 Malcolm does not conform with the data points between CPT 18 and 19 per CGS FER 259.
- The cantilevered structure at 1751 Malcolm over the no-build area violates LAMC 91.106.4.1 Exception 4.[1]
- There is a **second fault** line along the alley for both 1772 Glendon and 1751 Malcolm that was not investigated (see Figures 1 and 2). Under the Alquist Priolo Act Section 3603(a), the City lacks authority to waive a 50-foot no-build zone from the property line for 1772 Glendon and 1751 Malcolm along the southern boundary of the site in the absence of a fault investigation. *None was conducted for the southern fault.*

> "The following specific criteria shall apply within earthquake fault zones and shall be used by affected lead agencies in complying with the provisions of the Act: (a) No structure for human occupancy, identified as a project under Section 2621.6 of the Act, shall be permitted to be placed across the trace of an active fault."
>
> "Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault unless proven otherwise by an appropriate geologic investigation and report prepared as specified in Section 3603(d) of this subchapter, no such structures shall be permitted in this area." ((Alquist Priolo Act, Section 3603(a))

[1] In addition to violating CPR Section 2623(c)(1), LADBS violated LAMC 91.106.4.1. Exception 4: "4. The department shall have the authority to withhold permits on projects located within a Special (Fault) Studies Zone established under Chapter 7.5, Division 2, of the California Public Resources Code. Permits may be issued if it can be demonstrated through accepted geologic seismic studies that the proposed structure will be located in a safe manner and ***not over or astraddle the trace of an active fault.*** Acceptable geologic seismic studies shall meet the criteria as set forth in rules and regulations established by the Superintendent of Building to assure that such studies are based on sufficient geologic data to determine the location or nonexistence of the active fault trace on a site. Prior to approval of a project, a geologic report defining and delineating any hazard of surface fault rupture shall be required. If the city finds that no undue hazard of this kind exists, the geologic report on such hazard may be waived, with approval of the state geologist." (emphasis added).

- There was no investigation of the southern fault along the alley. Therefore, there must be a 50-foot no-build area along the alley fault line for 1772 Glendon and 1751 Malcolm.

We incorporate by reference all LADBS documents for this permit including meeting notes, emails and any other printed material regarding project approval.

Attached is **Exhibit A**, a copy of the building permit application, dated September 28, 2918. We request a written report from LADBS in response to this complaint. ***On the basis of Locality 10, FER 259, and the failure to conduct investigations of the southern fault, Fix the City requests that LADBS revoke all approvals and temporary Certificate of Occupancy or permanent CofO.***

Please note LADBS Public Records Act Request PR 19-16472, May 23, 2019, ***(Exhibit D), shows Mr. Schneidereit's knowledge and awareness of FER 259.*** *Yet when the building permit application was filed in 2018, there is no evidence in the record that LADBS consulted and complied with FER 259. Instead, LADBS relied upon the 2016 approval.*

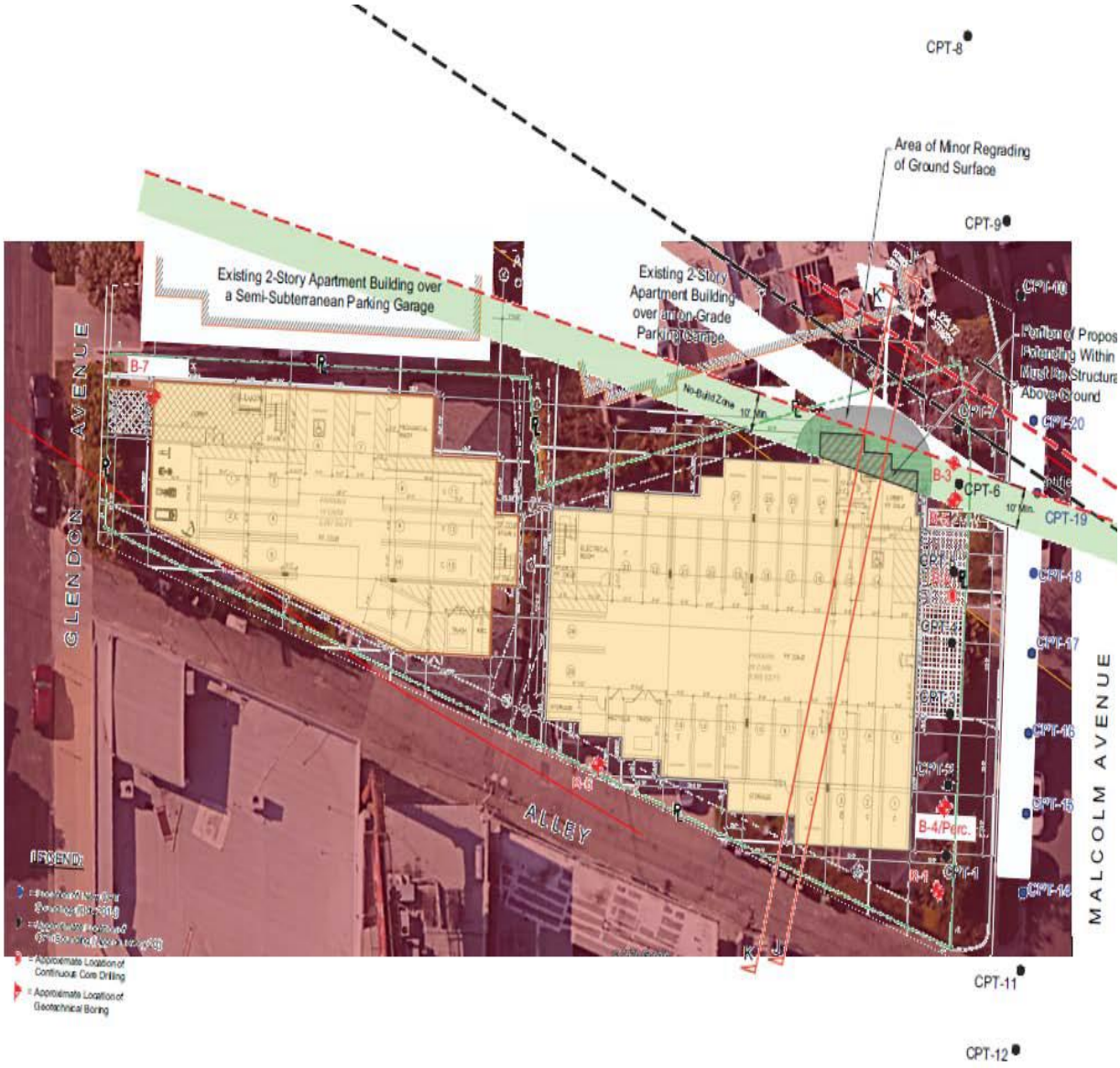

Figure 1. Fault line at southern boundary of 1772 Glendon Avenue not investigated – requires 50-foot setback.

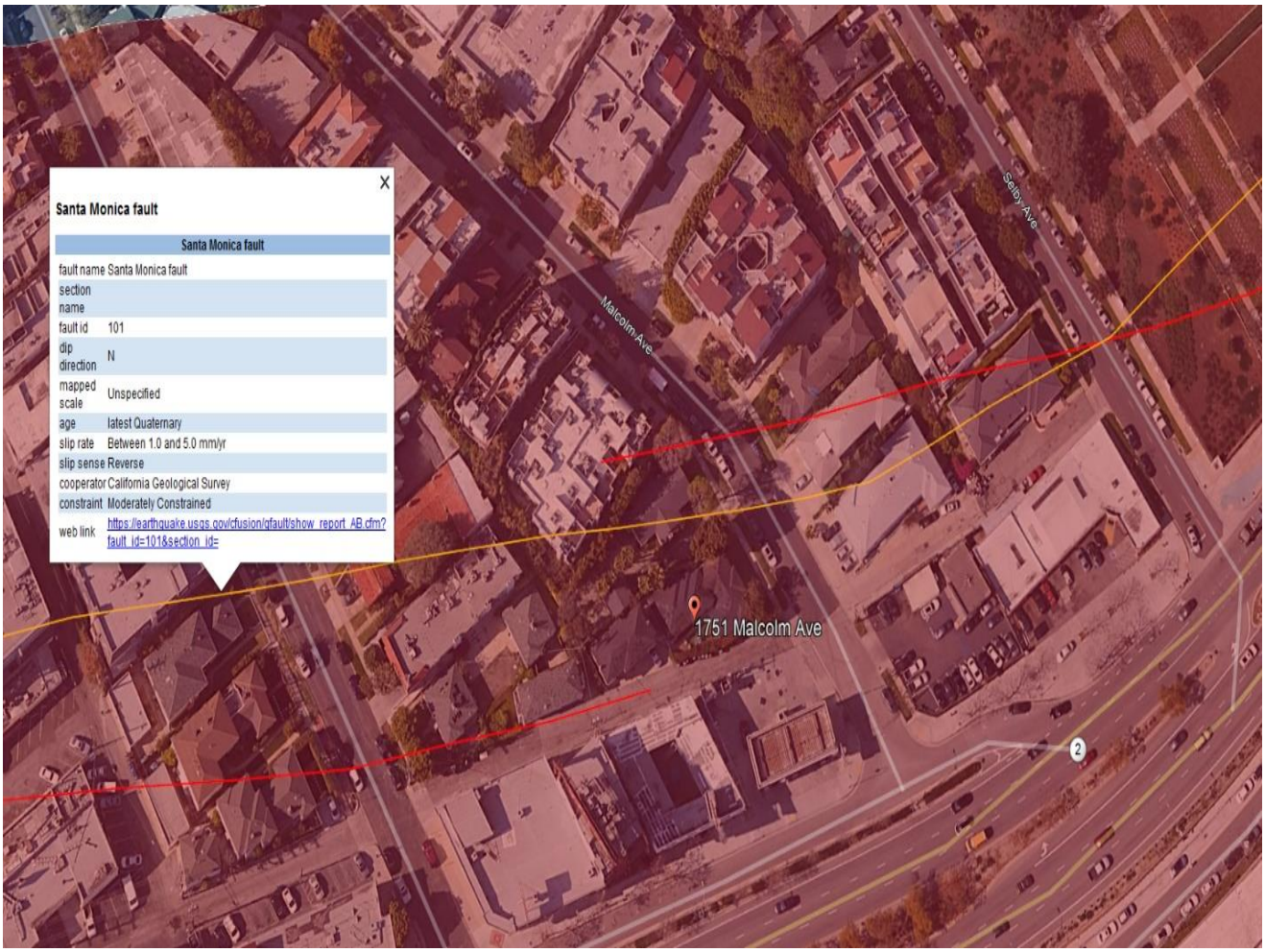

Figure 2 Entire site within Santa Monica Fault Zone with second red fault line at south

The City does not have authority to waive the study and waive the required 50-foot setback. Under **California Resources Code Section 2623** the City may impose stricter requirements, but may not substitute weaker local requirements.

Furthermore, with *only one point of measurement*, it was impossible to determine the trend line for the fault on 1751 Malcolm, as admitted in the August 19, 2015 Correction letter signed by Daniel Schneidereit: *“”Additional exploration is required to determine the fault’s trend in at least two locations to warrant the recommended reduced setback “* [from 20-feet to 10-feet].

Please note that the second report and Correction Letter signed by Casey Jensen on December 29, 2015, recommended a setback “of ***at least*** 20 feet from the fault splay...” (emphasis added). Yet without additional physical investigation, and only a meeting on January 13, 2016 with the applicant, on February 1, 2016, Daniel Schneidereit reduced the 20-foot setback to ten-feet and allowed the structure over the fault by cantilevering the elevator and lobby area over the no-build zone. This approval was therefore

arbitrary and capricious and a gross abuse of authority, putting the public at risk, in violation of state and city laws.

This approval clearly violates AP because it is a building for human occupancy over a known fault. No build means no build. Placing an elevator and lobby --- escape routes, over a known fault is in direct violation of state law enacted to protect public safety.

Based on CGS and USGS fault lines within the AP Fault Map for this site, the ***City failed to require an investigation of the fault on the southern boundary*** of 1772 Glendon Avenue and 1751 Malcolm Avenue *as shown above in Figures 1 and 2*. ***This was a gross prejudicial abuse of authority***.

Background

In July 2017, the applicant indemnified the City (DIR-2017-342-DRB-SPP, ENV-2017-343-CE).

This 18-unit *luxury* rental project is located within the Santa Monica Fault and mapped in accordance with the Alquist Priolo Act. To our knowledge, there are no affordable units in this project. The project is also located in a Liquefaction Zone and a Methane Zone. Two 2015 geological consultants' seismic investigations were submitted to LADBS for seismic approval. We do not have access to those studies which should be on file in LADBS as well as CGS, which included them as "Locality 10, 1751 Malcolm Avenue" in FER 259, pp. 26-27 and cited below. **Exhibit B** contains FER 259 pages 26-27.

LADBS twice **denied** approval after each study was reviewed**.** Exhibit B includes the two denials as shown in **Exhibit C,** obtained through LADBS Public Records Act Request19-16472, May 23, 2019.

On January 27, 2016, Daniel Schneidereit of LADBS submitted these expert reports to the California Geological Survey (CGS) as shown in **Exhibit D.** After review, CGS published the results of the study in FER 259 (Fault Evaluation Report 259). This study is the statutory authority to determine seismic hazards.

The Alquist Priolo Act established primacy over cities regarding seismic safety. The City of Los Angeles is required to follow this state law under California Public Resources Code Section 2623(c)(1) (see **Exhibit E**): the city may "establish policies and criteria which are stricter than those established by this chapter." There is no statutory authority to waive state standards and criteria.

The applicant's response to the second denial on December 29, 2015) was an email on January 4, 2016, from Shant Minas, to Daniel Schneidereit and Casey Jensen, objecting to switching review from Daniel Schneidereit to Casey Jensen, and requesting

a meeting with the developer and Schneidereit (**Exhibit D**, p. 2/75).[2] There are no new studies referenced in the emails, only a request for a meeting with the developer and Schneidereit. It is not known if this meeting occurred. However, just a few weeks later, on February 1, 2016, LADBS approved the seismic study (**Exhibit F**). Was the basis for this reversal without new substantial evidence to our knowledge, the requested meeting between Schneidereit and the developer?

When a new application was submitted in September 2018 (Exhibit A), CGS FER 259 Locality 10 was the official geological authority. It was published nine months prior to the 2018 building permit application. Instead of consulting this report, LADBS ignored it and relied on the February 1, 2016 approval. Again, the basis for approval in 2016 and the failure to consult CGS FER 259 Locality 10 in 2018 remain unexplained. Finally, the mischaracterization of the fault lying in the northeastern area of the site is contradicted by Figure 16 in CGS FER 259, p. 27.

The December 29, 2015 denial summary from LADBS (Exhibit C) incorrectly claims the fault was in the **northeastern** portion of the site, when the fault rupture study on page 27 of FER 259 shows it running through the center of the site between *CPT 18 and CPT 19 as shown below in Figure 3.*

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[2] "a meeting with Dan [Schneidereit], with client present, to discuss and finalize our response. There have been multiple changes to the building plans already made due to the presence of the fault in the NE portion of the property as previously reported by us, and I would like to minimize any additional future changes by having another meeting." ***Note the fault is in the CENTER of the site, not the northeast****., and there is a second fault along the southern boundary of the property that is never addressed.*

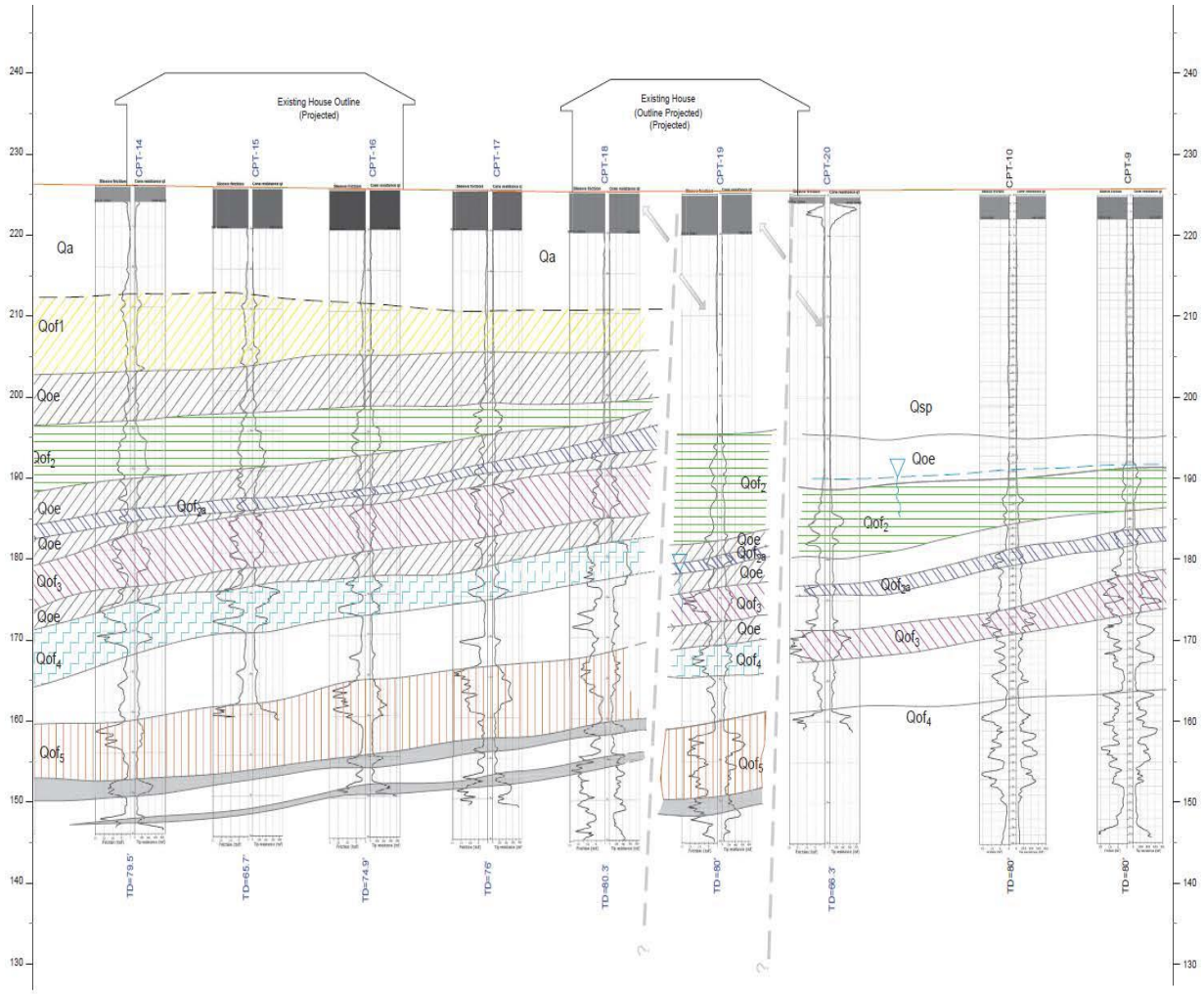


Figure 3 *CGS Figure 16: Portion of geologic cross section A-A" constructed along Malcolm Avenue by AES (2015b), Drawing 2) looking west. Note the thick sequence oF Holocene "sag pond" deposits (Qsp) faulted against broadly folded Pleistocene older fan (Qof) and older estuarine (Qoe) deposits in apparent north-south-sown vertical separation. Source: CGS FER 259, p. 27.*

In the absence of new substantial evidence in 2018, LADBS violated the clear language of CGS FER 259, the ultimate authority on fault rupture studies within the Santa Monica Fault. Approval was arbitrary and capricious, not supported by substantial evidence, and directly in conflict with CGS FER 259 and constituted a gross, prejudicial abuse of authority.

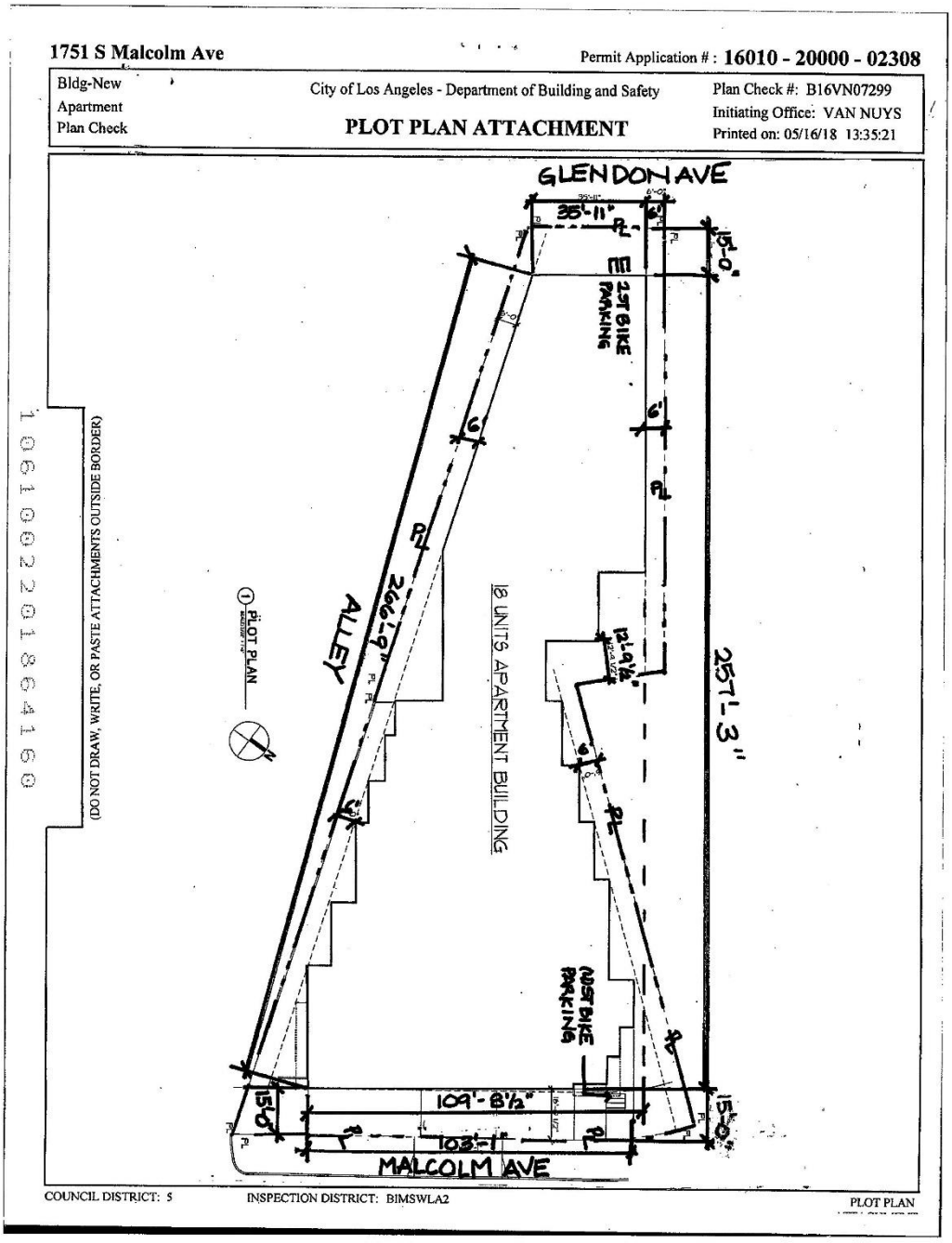
1751 Malcolm Avenue is built over the active fault viewed from Malcolm Ave. (Source: Fix the City).

Our concern is not speculative: the two 2015 consultant reports found physical evidence of an active strand of the Santa Monica Fault, as published in CGS FER 259 (pp. 26-27):

> **"Locality 10 - 1749-1751 Malcolm Avenue**
>
> "A combined fault study and geotechnical investigation was performed for a proposed residential development at 1749-1751 Malcolm and 1772 Glendon Avenues by Applied Earth Sciences (2015a, b). The fault investigation consisted of a single transect along Malcolm Avenue constructed from 20 CPTs and three continuous core borings drilled to a maximum depth of about 80 feet. Spacing of CPTs/borings varied from 5 feet (between CPT/boring pairs) to over 25 feet in the public right-of-way, where numerous utilities were located. In their borings, the consultants identified both Holocene alluvium and "sag pond" deposits, along with Pleistocene alluvial and estuarine sediments.
>
> No well-developed paleosols were identified in the core samples, thus the consultants used various gravel and silt layers to correlate between CPTs/borings and look for stratigraphic anomalies that would suggest faulting. Their analysis indicated a thick sequence of Holocene silt and clay (interpreted as "sag pond deposits) was juxtaposed against the older Pleistocene sedimentary package between CPT-18 and CPT-19 (Figure 16). Additionally, they note groundwater was encountered in one boring north of CPT-18 and not in either of the borings down gradient to the south. Based on these findings, they interpret an active strand of the Santa Monica Fault trends through the

immediate vicinity of CPT-18 and CPT-19. Consequently, the consultants established a "no build zone" (emphasis added).

CPT-18 and CPT-19 are NOT in the northeastern portion of the site. They are on the right side of the garage entrance shown in the photo above. The plot plan attached to the building permit, shown on the next page, shows that the entire site was built over with a few zig-zags on the northern boundary and not around CPT 18 and CPT 19.



LADBS grossly abused its authority and put the lives of the 18 families at risk, in violation of the very laws and regulations enacted to protect human life. Approval approve the site, both state law and city laws were violated, as well as the adopted policies and procedures in LADBS publications mandating CGS reports as stated on the first page of both publications (P/BC 2020-113, P/BC 2020-129) included in **Exhibit G.**

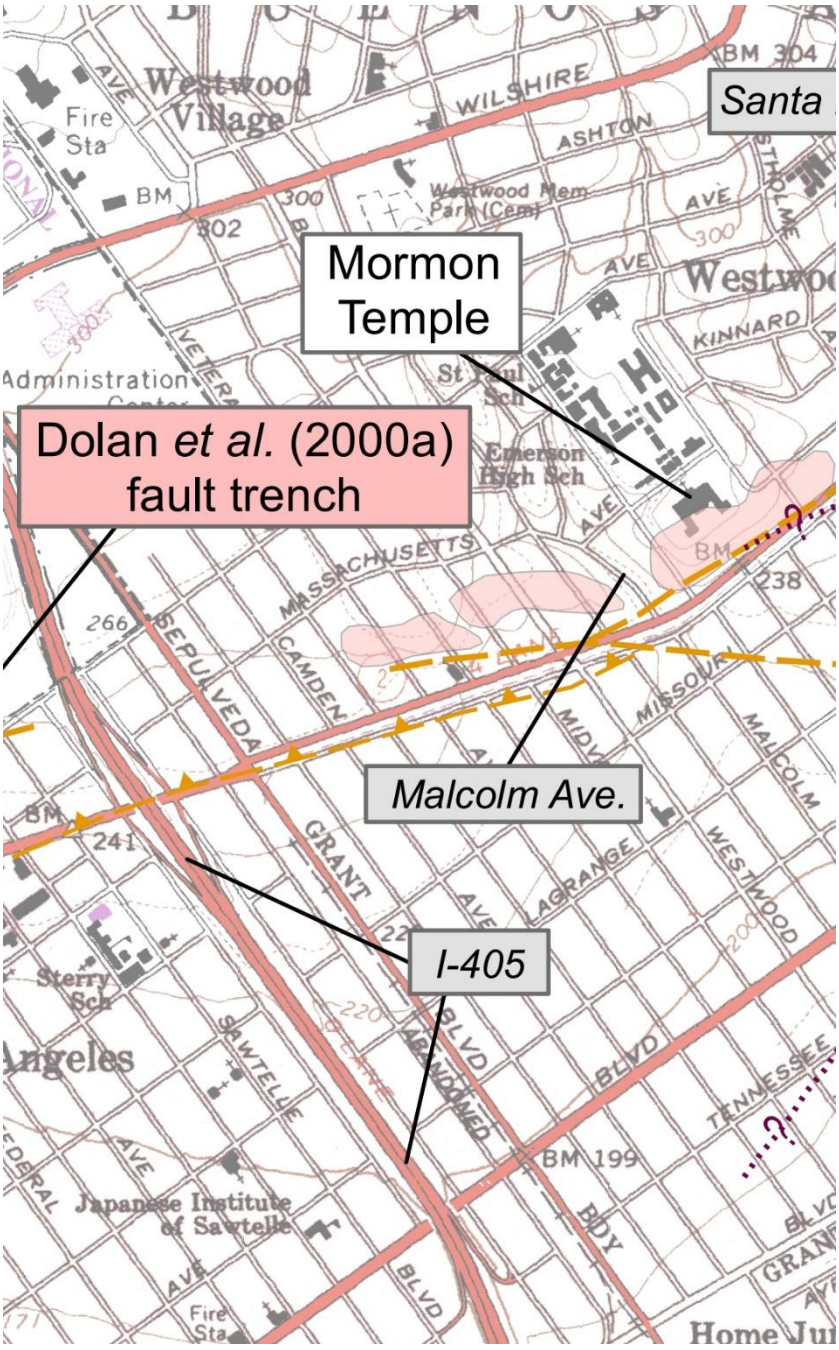


Plate 1, CGS FER 259 (subsection showing Malcolm Avenue site).

Please determine if there was a meeting between the applicant and Mr. Schneidereit, during January 2016, and any meeting notes, a third surface fault rupture study for this site that could support seismic approval in 2016. The study, if it exists, would have been conducted between December 29, 2015 and February 1, 2016.

Note that documented in the Public Records Act request (Exhibit D), the very studies that were ignored for 1751 Malcolm building permit application in 2018, were sent to consultants for nearby projects by Mr. Schneidereit and that the week before LADBS reversed its two seismic denials, on January 27, 2016, Daniel Schneidereit, LADBS Engineering Geologist I, sent these consultants reports to the state (to Brian Olson, the author of the CGS FER 259). CGS reviewed the studies and then included them in FER 259.

FER 259 is binding upon the City. It cannot under state law, impose weaker conditions. **The no-build area is required, and it is in the center of the site, not the northeastern edge, based on Figure 16 in FER 259**. Based on his sending the 2016 studies to CGS, and his two previous denials, Mr. Schneidereit was clearly aware of the role of CGS in regulating surface rupture fault investigations and of the recommendation for a no-build area.

Upon receipt of a new building permit application in 2018, the City (LADBS) was obligated to consult FER 259, which would have required a no build area in the center of the site. He failed to issue a new review under the 2018 FER 259 report. Instead, he relied upon his sudden approval in 2016, and his misrepresentation in 2015 of where the fault was on the site. It is not as he stated, in the northeastern area. As far as we know, his 2016 approval was not based on a new study. Even if it was, he was required to consult FER 259 in 2018 to approve the new building permit application.

The 2018 building permit application was required to be processed under current laws and regulations and must be **revoked along with any Certificate of Occupancy.**

IMMEDIATE CORRECTIVE ACTION REQUIRED

State and City laws protecting human life must be obeyed in order to protect the 18 families slated to live at 1751 Malcolm Avenue. LADBS does not have authority to override CGS's reports. It must follow FER 259 and CGS Special Publication 42 and Note 49, as well as California Resources Code Section 2623(c)(1) (Exhibit E). These state publications provide the requirements for surface rupture investigations. It appears that these procedures were followed and the results willfully and prejudicially ignored by LADBS.

Any google search for seismic information at this address yields the state report. Approval for seismic safety for this project on February 1, 2016, was contradicted by the two site investigations conducted in 2015, and prohibited by FER 259, which was published nine months prior to the new building permit application and could not lawfully be ignored.

The failure to follow state requirements and the city's own Building Code, and its policies and procedures (Exhibit F) is a significant, substantial abuse of authority that imperils public safety, the first priority of local government under the California Constitution (Art. XIII, Section 35).

LADBS unlawfully ignored the 2018 state report and instead recycled its unexplained and unsupported approval in early 2016, despite two reports and CGS FER 259. Keep in mind that those studies were not just nearby sites, *they were for this exact property.*

New permit applications must conform with current law and regulation. Whatever the basis of the City's geologist ignoring the 2015 study, the 2018 state report could not be lawfully ignored. Based on the consultant's reports forwarded to CGS by Mr. Schneidereit, city staff knew full well that this was a no-build site approximately in the center of the site. In fact, they sent those studies to other developers seeking seismic investigations for new projects (see emails from LADBS and consultants, attached, 75 pp.).

There are ample staff emails in Exhibit D that show that staff communicated with the developer and representative, and demanded that only Daniel Schneidereit should review the project. Do clients choose the staff or does the manager?

Finally, there is no subsequent 2018 approval by Schneidereit. Instead, the old approval was used, despite the CGS report being published nine months prior to the submission of the current building permit application. The City does not have authority to ignore this vital state law. LADBS Seismic staff have failed to uphold city and state laws designed to protect public safety. CGS FER 259 pp. 26-27 are attached.

LADBS Document No. P/BC 2020-129 states a research requirement for surface fault rupture studies to "Search City and State records for fault investigation reports for properties in the site vicinity." This very site was studied in CGS FER 259! Had LADBS staff studied the current state study at the time of the current permit application. knowing it was within a fault study zone, it would have been prohibited from issuing any approvals. For example, a mat foundation cannot be substituted for a no-build area, and there is no evidence that LADBS consulted either CGS FER 259 or the two reports it had received. There is no evidence in the record supporting approval.

The application for this project's building permit and certificate of occupancy was filed on September 28, 2018, nine months after CGS FER 259 Locality 10, 1749-1751 Malcolm Avenue designated a no-build area on January 5, 2018.

This approval violated both CGS regulations, the Alquist Priolo Act, and LADBS P/BC 2020-113 and LADBS P/BC-2020-129 which specific the requirements for seismic investigations.

There is additional physical evidence of an active surface fault at this site, as shown in the photos below:

Figure 4 broken curb at fault between CPT 18 and 19

Figure 5 rupture on Malcolm curb in front of no-build area

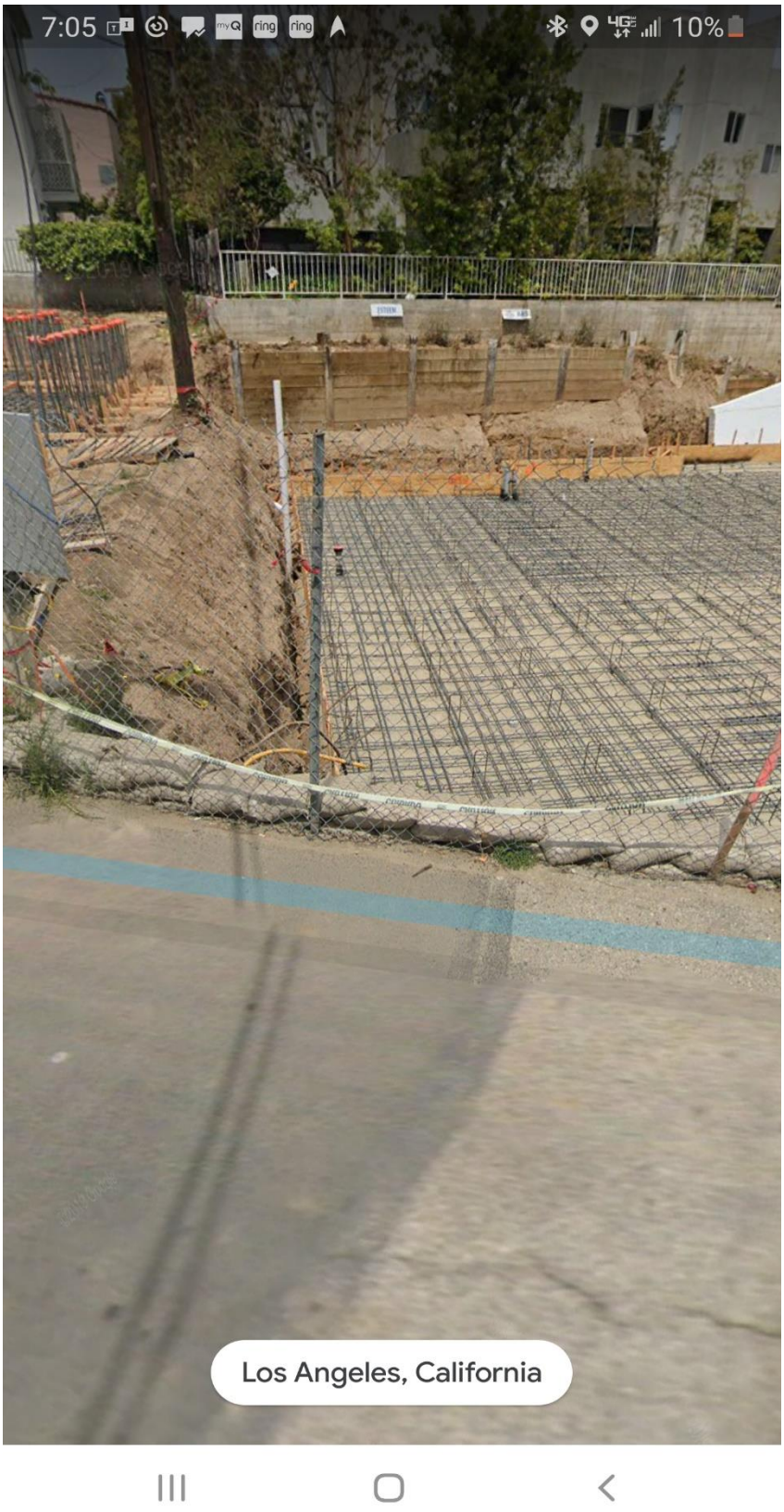


Figure 6 Fault in alley visible

Figure 7 Fault runs across Malcolm into site. Roadway cracks from surface faulting run into site.

We already paid the appeal fee.

Sincerely,

Laura Lake

Laura Lake, Ph.D.

Board Secretary, Fix the City

LIST OF EXHIBITS

A Building permit application #16010-20000-02308 for 1751 Malcolm Avenue/1772 Glendon Avenue, submitted September 28, 2018

B California Geological Survey FER 259, pp. 26-27 (January 5, 2018).

C LADBS denials of seismic safety in 2015 and letter dated December 29, 2015.

D LADBS Public Records Act response PR19-16472, p. 1 of 75 pages of emails, transmitting second surface fault rupture study for 1751 Malcolm Avenue to CGS, from Daniel Schneidereit to Brian Olson, author of FER 259, dated January 27, 2016.

E California Public Resources Code Section 2623(a)-(c)

F LADBS Document Report soils & geology file approved, February 1, 2016.

G LADBS Information Bulletin/Public-Building Code, P/BC 2017-113 (previously issued as P/BC 2014-113; P/BC 2020-113, “Contents of Reports for Submittal to LADBS Grading Division,” and P/BC 2020-129 “Surface Fault Rupture Hazard Investigations.

H. Report by Wilson Geosciences on 1751 Malscom Ave. and 1772 Glendon Ave.

I. Kenneth Wilson’s c.v.