SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
WEST DISTRICT

FIX THE CITY, etc.,
Petitioner and Plaintiff,

vs.

CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; LOS ANGELES DEPT. OF CITY PLANNING; and DOES 1 through 100, inclusive,
Respondents and Defendants.

HOLLYWOOD CHAMBER OF COMMERCE,
Intervenor.

CASE NO. **BS138580**

RULING AND ORDER ON MATTERS SUBMITTED JUNE 24, 2014

LA MIRADA AVENUE NEIGHBORHOOD ASSN. OF HOLLYWOOD, etc.,
Petitioner and Plaintiff,

vs.

CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1 through 100, inclusive,
Respondents and Defendants.

HOLLYWOOD CHAMBER OF COMMERCE,
Intervenor.

CASE NO. **BS138369**

RULING AND ORDERS ON MATTERS SUBMITTED JUNE 20, 2014

On February 11, 2014, this Court filed its Judgment and issued its Writs of Mandate in each of these related matters (and on a third petition filed by SaveHollywood.org[1]), having previously (on January 15, 2014) filed its Statement of Decision in these matters, thus resolving all issues then presented. The Writ issued in each case ordered respondents City of Los Angeles, its City Council and its Department of City Planning (Respondents) to rescind, vacate and set aside all actions approving the Hollywood Community Plan (HCPU) and all related approvals and, inter alia, to exercise their discretion to amend the Hollywood Community Plan "in a manner that conforms to the policies and objectives of the General Plan of the City of Los Angeles and the requirements of CEQA." In addition, the Court enjoined Respondents from taking specified actions "until an adequate and valid EIR is ... certified as complete, and such EIR is consistent with CEQA, ... and until legally adequate findings of consistency are made as required...."

The Court ordered that Respondents make an initial Return to the Writ within 90 days, and allowed any objections to be filed within 40 days of service of the Return. Respondents have made two returns (on February 19 and April 10, 2014), each of which they describe as an "Initial Return."

It is in response to the second of these Initial Returns to which, on May 19, 2014, Petitioner La Mirada filed its Notice of Motion and Motion for Orders: (1) Maintaining Writ of Mandate in Full Force Until Fully Complied With; (2) Compelling City to Reconsider Its Return to The Writ Issued and to File an Additional Return to the Writ; (3) To Make Further Orders Necessary to the Writ; and (4) For the Court to Impose a Fine of up to $1,000 Against the City of Los Angeles per CCP section 1096."

Petitioner Fix the City has filed two separate motions. On May 6, 2014 it filed its Verified Supplemental Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief; and on May 29, 2014, it filed its Notice of Motion and Motion for Leave

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[1] No objection to either Initial Return has been filed by SaveHollywood.org.

to File Supplemental Petition Nunc Pro Tunc, etc. The latter filing was preceded by Respondents filing two days earlier (on May 27) of their Notice of Motion and Motion to Strike Fix the City's Supplemental Petition and Complaint. Respondents' opposition to Fix the City's motions and their own motion are premised on the arguments that Fix the City filed its May 6 Verified Supplemental Petition too late and cannot correct that "error" by an order nunc pro tunc.

After all supporting and opposing memoranda were filed, these matters were argued on June 20, 2014 and submitted. Having considered the memoranda of points and authorities and other documents filed by, and the arguments of, the parties, the Court now rules as follows.

In making these rulings and as requested by one or more parties, the Court takes judicial notice of the 1988 Hollywood Community Plan (requested by City, and by petitioner La Mirada in its Exhibit 31) and of Exhibits 17 through 34 to the Declaration of Bradly Torgan (requested by La Mirada). On its own motion, the Court takes judicial notice of a Resolution of the City Council adopted April 2, 2014, as it is central to the arguments advanced by City and is repeatedly referenced in City's memoranda (it is also relied on and analyzed in petitioners' filings); of Sections 554, 556 and 558 of the Charter of the City of Los Angeles; and of those statutes of the state of California identified below.

Underlying the matters before the Court is a fundamental procedural error on the part of Respondents. Once a court has issued its writ of mandate, the entire matter remains subject to the jurisdiction of that court until the court finally reviews and rules on the actions taken by the respondent to comply with the writ. Code of Civil Procedure section 128(a)(4). This power is further illustrated by reference to long-established procedures in supervising compliance with writs of mandate issued in CEQA matters.[2]

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[2] As will be discussed in more detail in the text below, a peremptory writ of mandate in a CEQA proceeding orders the respondent to file a return by a date certain informing the court of the respondent's actions in compliance with the writ. (*Endangered Habitats*

Review of documents revised, or prepared anew, following issuance of writs of mandate whether based, e.g., on inadequate original CEQA documents, is plenary, subject only to the scope of review principles then to be applied. Further, such subsequent review of revised or new documents, whether EIRs or revised planning documents (such as the HCPU here at issue) adopted in response to such writs, is not controlled by the otherwise applicable statutes of limitations, whether set out in the Public Resources Code or elsewhere. There is a clear policy reason why this is so: To apply those limitations to such EIR or other determinations would have the potential of depriving the court at whose order the action was taken of the very jurisdiction it has exercised, and of its continuing jurisdiction -- and obligation -- to ensure that its orders are *properly* carried out. While a court does not tell an agency how to exercise its discretion, it has the obligation to assure that what is done in response to its writ is lawful and within that discretion.[3] This review is the *sine qua non* of assuring compliance with

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League, Inc. v. State Water Resources Control Bd. (1997) 63 Cal.App.4th 227, 244; see 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2011) § 23.121, p. 1265).

[3] The Court of Appeal, quoting from a leading treatise on the subject, describes the purpose and function of the return as follows:

"CEQA "requires that, after issuing a writ, the trial court must retain jurisdiction over the matter until it has determined that the agency has adequately complied with CEQA." (Remy et al., Guide to the Cal. Environmental Quality Act, *supra*, Jud. Review, p. 428, col. a, citations omitted.) The treatise points out that the best-known example of such continuing jurisdiction is the trial court's efforts (concluded in 1997) to obtain compliance (from parties including some of these same Respondents) with a 1973 writ controlling Owens Valley groundwater. "A peremptory writ of mandate does not necessarily exhaust the court's authority; where it does not provide complete relief, the court may continue the lawsuit *and make such interim orders as the case may require*. [Citation.] In the absence of a final judgment we retain jurisdiction over the parties and subject matter, as well as ancillary jurisdiction to award costs." (*County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 85 [144 Cal.Rptr. 71]; see also Bass et al., CEQA Deskbook (1996) CEQA Litigation, p. 129.) A writ of mandate is a piece of paper. If its purpose is to declare the rights of parties, its existence suffices. If its purpose is to compel someone to *do* something, its existence does not suffice. The proper way to ensure compliance is to require a return on the writ, which commands a party to do something and report to the court that the act has been done. (See Cal. Administrative Mandamus (Cont.Ed.Bar 1989) Procedures After Trial, §§ 13.10-13.11, pp. 411-414

the writ previously issued. Code Civ. Proc., § 128, subd. (a)(4)); *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479-480; . (*City of Carmel–by–the–Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205.

Once a court has made an order that a respondent in an action pending before that court must reconsider, e.g., its community plan and the related EIR, the respondent[s] in such case must submit to that court as part of the Final Return any new community plan and EIR which are prepared. It is not required that a petitioner file a new action to test the adequacy of such a final return; it may present any issues that it considers unresolved or erroneously resolved in the documents submitted in the Final Return within the time allowed for the filing of objections to the Final Return. (If a petitioner wishes, it may also proceed by way of supplemental petition [on proper motion]). Of course, this does not foreclose other interested persons from filing their own challenges to the actions then proposed by respondents.[4] Those "new" documents prepared and submitted in expected compliance with the writ of mandate issued are not effective until that court has "approved" them; the provisions of the Public Resources Code or other statutes regarding time limitations for a party to file an action do not apply anew -- those filing limitations were already applied and any challenges to timeliness would have already been ruled on. In this case, these timing issues are long-ago resolved.

Any suggestion in this case that Respondents here can immunize any of the actions they have now taken or may take relating to matters addressed in the Writs of Mandate or Judgments filed herein (as explained in the Statements of Decision issued in

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[providing form for this purpose].) *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 243-244. [Italics added.]

[4] This may explain why the third petitioner herein, Save Hollywood.org has not filed any objection prior to Respondents filing their Final Return.

these cases) in the event a petitioner does not file a separate challenge to such action within a time other than that specified in the Writ issued by this Court, is erroneous. The ultimate decision on whether Respondents have complied with those Court Orders is made by the court that issued the Writ and Judgment -- this Court -- once the Final Return has been filed. Any petitioner has the right to then bring to the attention of the Court those issues it considers unresolved or not in compliance with the Writ, and to do so according to the time schedule provided in the Writ.

Accordingly, Fix the City's present motion is not late; it is early. Thus, Fix the City's request that relief be granted nunc pro tunc is unnecessary. Respondents, by their own designation, have filed only *initial* returns to the Writ. The matter is not ripe for general review until all of the documents needed to be revised or newly prepared in response to the orders of this Court have been completed and are submitted as part of the Final Return and until they are determined by this Court to meet the requirements of applicable law.

The Writs issued in this case ordered two returns; the first to be filed within 90 days and the second to be filed "after [Respondents have taken] all actions to comply with this Writ." No one claims the final documents have been prepared.[5]

Further, this Court specifically "reserve[d] jurisdiction in this action until there has been full compliance with this Writ as provided in Code of Civil Procedure section 1097." (Final sentence of each Writ.)

Here, these Respondents have elected to take what they contend to be

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[5] Traditionally, an initial return advises the court which issued its writ of mandate whether the respondent is going to appeal, or what steps the respondent plans to take to comply. See, e.g., *City of Carmel-By-the-Sea v. Board of Supervisors, supra*, at 970-971. Respondents omitted to mention in either "Initial Return" filed in this case that they did not appeal; nor have they set out a timetable for their compliance with the Writ of Mandate issued.

appropriate interim actions, and have twice reported on matters in that regard.[6] Using "interim returns" to keep the Court generally apprised of what steps Respondents are taking is not subject to serious criticism as a *procedural device*. Any steps taken are, however, subject to *substantive* scrutiny as necessary -- and that is what Fix the City (and La Mirada) has (have) done by filing the motions now considered. That scrutiny will occur at the appropriate time, whether now or once the Final Return has been filed.

Because no Final Return has been filed Fix the City's Supplemental Petition and its Motion for Leave to File ... Nunc Pro Tunc ... are early rather than late, as noted above. However, as there has not yet been presented any authority to substantiate the filing of the Supplemental Petition without first obtaining leave of court, Respondents' Motion to Strike Fix the City's Supplemental Petition is granted without prejudice to a hearing on Fix the City's Motion for Leave to File that Petition which remains to be heard (albeit the relief would not be to grant it nunc pro tunc).

If Fix the City wishes to have its motion heard with the understanding that it would not be granted nunc pro tunc (as there is no need to do so), or if it wishes to file a new motion seeking permission to file a Supplemental Petition, the Court will set it for hearing

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[6] In its first Initial Return, Respondents advised the Court that they have issued a Zoning Information (ZI), and then state: "If for any reason the Court determines that the ZI does not comply with the Court's orders, the City will take steps immediately to modify its practices." (Initial Return 1:5-12.)

Respondents appear to be soliciting the very "micro-management" to which they otherwise object. Respondents have (correctly) argued that a court reviewing matters such as these does not direct specific actions, but instead reviews them for overall compliance.

Until the entirety of the elements of compliance with the Writs and Judgments in these cases are prepared, and are submitted, and are reviewed, the Court will not know the full scope of the issues which it will review and adjudicate or have the full context in which to evaluate compliance with the Writs. It is a misallocation of judicial -- and party -- resources to make decisions piecemeal. Indeed, in cases as complex as these, doing so may result in errors -- or the objectionable micro-management referred to above. Therefore, the Court defers any comment or action on the "ZIs" until it considers the Final Return.

on September 18, 2014 at 8:30 a.m.[7] and the parties may file opposition and reply briefs according to Code. If Fix the City wishes to wait until the Final Return is filed and then consider its next steps, it may do so.

In either event, Fix the City must file a clear notice of its intentions (e.g., a revised motion for leave to file its supplemental petition, or a notice that it is withdrawing its motion for the present) by August 15, 2014 so that Respondents will have time to prepare, serve and file any opposition in advance of the September (or other) hearing date. In the event Fix the City's motion goes forward, it will need to advise whether the Supplemental Petition previously filed will be the operative pleading in the event its motion is granted.[8]

La Mirada seeks orders "(1) Maintaining Writ of Mandate in Full Force Until Fully Complied With; (2) Compelling City to Reconsider Its Return to The Writ Issued and to File an Additional Return to the Writ; (3) To Make Further Orders Necessary to the Writ; and (4) For the Court to Impose a Fine of up to $1,000 Against the City of Los Angeles per CCP section 1096."

Respondents make several arguments in opposition to La Mirada's motions (and

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[7] The Court selected this date as there was recently filed another motion in the related *SaveHollywood.com* case, to be heard that date. Another date can be selected, using the new on-line motion reservation system. If an appropriate date is not available through the on-line system, because CEQA actions entitled to priority, counsel should appear ex parte to obtain another, earlier date.

[8] For purposes of the present decision, the documents filed by Fix the City and its arguments made on June 20 are considered as Fix the City's preliminary position statement on the matters at issued based on Respondents' two Initial Returns, as raising issues which in Fix the City's view the Court may address as part of its continuing jurisdiction to assure obedience to its orders in this case. Courts do not have their own "eyes and ears" but rely on the parties to present issues and facts to them for consideration and decision, of course.

The Court is not soliciting piecemeal adjudications; however, if any party is of the view that some action must be reviewed prior to Respondents' full submissions with the Final Return, then it may seek Court intervention as it believes necessary.

implicitly to some overlapping arguments advanced by Fix the City).

In considering La Mirada's requests for interim relief, the Court is guided in part by the Respondents' concern that "piecemeal adjudications" are to be avoided.

La Mirada's first request, that the Court maintain the Writ of Mandate in force until it is fully complied with, and not discharge the Writ against Respondents until it is fully satisfied, viz., until the Final Return is filed and ruled on (citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205) is axiomatic. As discussed above, that is the law and the practice, and that is the scope and extent of any court's jurisdiction over compliance with writs of mandate it has issued, as confirmed by numerous cases, *County of Inyo v. County of Los Angeles, supra,* among them.

This request is unopposed. It is clear beyond any doubt that a court has the obligation to see that its orders are enforced. The issues raised and considered below are good indication and reason that the motion should be granted; and this motion by La Mirada is granted.[9]

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[9] This set of controversies highlights that there is good cause to specify that there are to be no more "initial returns," but only a single Final Return and that any petitioner may file its objections to the Final Return hereafter filed by City within a specified time thereafter. Because the Final Return is expected to include extensive documentation, the time for filing any objections to it needs to be set accordingly. The Court will therefore issue an Amended Writ of Mandate with provisions for a single further and Final Return, also specifying that any party may file its objections to -- or agreements with -- that single Final Return within 60 days of the date of filing of such Final Return by Respondents. In addition, a provision will be added to allow any petitioner to apply to the Court for an extension of time in which to file objections (or agreements) by giving ex parte notice that such relief is being sought, provided that such notice shall be given at least 72 hours prior to the date for the hearing of that request and that the text of any such ex parte application to extend time be delivered to each other party at least 24 hours prior to the hearing thereon. (Even though SaveHollywod.com did not file any objection to either Return filed to date, the same order will be made in that matter for the same reasons.)

In the event Respondents believe they have need to file multiple "final" returns, or any other "initial returns" they may apply ex parte to do so using the same notice and hearing provisions set out above, but may not file any further interim returns without first seeking leave of court as just noted. The Court cautions however that it will need to be persuaded that there will be merit in any such further "piecemeal" adjudications.

La Mirada's second request is to order Respondents to "'reconsider further'" the actions which they took on April 2, 2014 and on which they report in their second "Initial Return" to the writ issued in this case, citing *Carmel-By-The-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971, "including by ordering the City to rescind a General Plan amendment adopted in furtherance of its return to the writ, and to file an additional return to the writ showing actual compliance with the Court's judgment and writ."

There are inter-related aspects to this request. First, one must understand the nature of the actions taken as set out in the April 2, 2014 Resolution adopted by Respondent City Council. Second, it must be determined whether the issues raised are ripe for determination at this time. If so, then third, it must be determined whether in adopting that resolution Respondents acted contrary to the Writ.[10]

Respondents also contend that La Mirada is barred procedurally from raising any of its contentions "because no pleading in this action" presents those claims.[11]

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[10] At this stage the Court need not address the argument that the April 2, 2014 resolution discussed in the text violates the separation of powers. The underlying matter will be resolved without the need for analysis of constitutional issues. However, the context in which the resolution was adopted -- its expressly stated intent to "overrule and supercede" this Court's decision in this case -- is remarkable and will be noted below as that stated intent gives context to the meaning of the paragraph added to the Framework Element of the General Plan, and it ignores the consequences of Respondents' failure to appeal from the Judgment issued in this case.

[11] Respondents additionally argue that both La Mirada and Fix the City are barred by the decision in *Saunders, et al. v. City of Los Angeles* (B232415, filed September 25, 2012) from raising these and other claims as each of these petitioners was a co-petitioner in *Saunders*. Respondents further argue that the holding of the Court of Appeal in *Saunders* that Programs 42 and 43 of the Framework Element of the City's General Plan are not mandatory precludes this Court from acting on the objections now raised by La Mirada. Respondents err. The issues presented here arose after *Saunders* was decided. Nor are the petitioners' contentions in this action barred by that decision, for reasons discussed in the Statement of Decision issued in this case.

Further, Respondents miss the crucial point: The issue in this case is not what may be in the Framework, but what MUST be in the HCPU and its EIR and related documents. Those were not at issue in Saunders; among other circumstances, they did not exist at the time Saunders was decided. (This was discussed in the Statement of Decision in this case.) And, La Mirada, as a petitioner in this case, is specifically

This contention lacks any legal basis. Respondents elected to file "Interim Returns" and any petitioner may file an objection thereto, or a motion that brings to the attention of the Court any aspect of (non)compliance with the Writ for review by the Court. It is the Writ which authorized both the "Interim Return" and the objection filed by La Mirada. It defies logic (and law) for Respondents to exercise their obligation under the Writ issued by this Court to file a return and then to object when a petitioner seeks to exercise its right under the same Writ to have the Court -- which has plenary jurisdiction over the matter in any event -- determine whether the action which Respondents reported on in that Return violates the orders made by the same court.

With respect to the merits of this set of contentions, viz., to the substantive effect of the actions taken by Respondent City Council, there is no dispute that on April 2, 2014, the City Council adopted a resolution which adds a paragraph to the Monitoring and Reporting section of the Framework Element of City's General Plan which reads as follows:

> "The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs. Furthermore, the monitoring programs discussed in *Saunders v. City of Los Angeles* ..., i.e., Programs 42 and 43 [,] are discretionary as the *Saunders* court held."

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empowered by the Writ of Mandate to file a response to each Return which Respondents file, as is petitioner Fix the City, just as this Court has the statutory and inherent authority and obligation to compel compliance to its lawful orders -- orders from which Respondents did not appeal. See, *e.g.*, *City of Carmel-By-The-Sea v. Board of Supervisors, supra*, 137 Cal.App.3d 964, 970 -971(failure to appeal constitutes waiver under most circumstances).

Program 42 is described in the *Saunders* opinion as an "implementation program to monitor the status of development activity, capabilities of infrastructure and public services to provide adequate levels of service, environmental impacts (e.g., air emissions). Program 43 is described as "specifically direct[ing] the City's Planning Department to '[p]repare an Annual Report on Growth and Infrastructure based on the results of the Monitoring Program, which will be published at the end of each fiscal year and shall include information such as population estimates and an inventory of new development...." (*Saunders, supra*, 2012 WL 4357444 at *2.)

To the extent Respondents claim that they have a right to amend the Framework Element of its General Plan to make clear that Programs 42 and 43 are not mandatory, they are allowed to do so by *Saunders*. It is axiomatic that, in so doing, they must act lawfully. And, in so doing, Respondents must not loose sight of what the Charter of the City of Los Angeles and the several applicable state laws (including but not limited to the mandatory provisions of the Public Resources Code) compel Respondents to do to prepare and have certified a valid HCPU and EIR, etc.

Focusing on the questioned April 2 action by Respondent City Council, the second sentence of the quoted paragraph asserts that "The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs."

La Mirada has brought to the attention of this Court (Exhibits 17 through 34 for Judicial Notice), however, that numerous Community Plans adopted by City have monitoring provisions -- and that, notwithstanding Respondent City Council's April 2, 2014 action[12] declaring or confirming that certain aspects of its General Plan are discretionary, it had earlier adopted these individual Community Plans, each of which contains a provision for monitoring and reporting. From this and other circumstances,

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[12] Why City waited until approximately a year and half and until after issuance of the Writ in this case to do what the court in *Saunders* told it on September 25, 2012 it might do, is not directly before this Court at this time.

La Mirada argues that the April 2 Resolution creates a conflict within Respondents' own planning laws.

A "whereas" clause preceding this addition makes clear that Respondents expressly and unequivocally adopted the change to "overrule and supercede" this Court's Judgment and Writ. In addition to ignoring that Respondents failed to appeal from the Judgment in this action filed on February 11, 2014, Respondents appear also to have omitted from their consideration in adopting this questioned resolution certain provisions of the Charter of the City of Los Angeles, requirements of state law -- as well as Respondents' long-standing practice of including monitoring elements in other community plans.

Among the City Charter provisions that are relevant is Charter section 554 which provides:

> "General Plan – Purpose and Contents.
>
> "The General Plan shall be a comprehensive declaration of goals, objectives, policies and programs for the development of the City and shall include, where applicable, diagrams, maps and text setting forth those and other features.
>
> (a) Purposes. The General Plan shall serve as a guide for:
>
> (1) the physical development of the City;
>
> (2) the development, correlation and coordination of official regulations, controls, programs and services; and
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> (3) the coordination of planning and administration by all agencies of the City government, other governmental bodies and private organizations and individuals involved in the development of the City.
>
> (b) **Content. The General Plan shall include those elements required by state law and any other elements determined to be appropriate by the**

Council, by resolution, after considering the recommendation of the City Planning Commission." (Emphasis added.)

Focusing on section (b) of this Charter provision, the first question is: How does the April 2 resolution meet this City Charter mandate to "include those elements required by state law...," particularly when the prior construction of the General Plan element being amended by this resolution repeatedly has been interpreted by Respondents to require inclusion in Community Plans of exactly the elements the April 2 resolution declares to be not required? Second, in what way does this resolution recognize the mandate of Public Resources Code section 21081.6 regarding inclusion of monitoring or reporting elements? Third, how is this change a mere continuance of the status quo as Respondents assert?

At the argument on the motions, when the Court pointed out the requirements of the Public Resources Code and that the *Saunders* opinion did not address the application of the cited provisions of that Code, Respondents' reply was that Respondents had the right to enact the April 2 Resolution. That assertion is unpersuasive for several reasons.

The Framework Element of Respondent City's General Plan is intended to set forth certain planning *objectives*. Those objectives are to be carried out in the individual Community Plans. The Los Angeles City Charter and other previously adopted community plans so provide and establish. City Charter sections 554, 556 and 558, statutes -- and the several Community Plans adopted heretofore -- are among the fundamental predicates for concluding that Respondents' adoption of the new language is contrary to law and to the Writ.

Even if the City Charter did not expressly command compliance with state law, Respondents are bound to comply with the Public Resources Code, including but not limited to its section 21081.6, which generally mandates exactly the elements which the April 2 Resolution erroneously claims are not required. Respondents' long-standing

course of conduct in including monitoring and reporting provisions in the several Community Plans provides further refutation of their "status quo" claim.

Notwithstanding its status as a party to *Saunders*, La Mirada has the right to report this new issue to this Court.

Respondents additionally argue that what they have done in so carefully wording the April 2 Resolution is to comply with *Saunders* while not violating the Writ issued in this case. That position is fraught with the concerns expressed by petitioners -- and the contradictions discussed. Respondents' contention that they comply with the Writ by stating that "[t]he Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring programs... (April 2 Resolution) -- which appears following the "whereas" clause in which Respondents declare their intent to "overrule and supercede" this Court's Judgment and Writ is "too clever by half." La Mirada correctly (and generously) characterizes City's action as a "semantic sleight of hand," citing *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 784. Indeed, how is City Charter section 554(b) to be understood other than to *require* that the General Plan implement state law as well as any other elements determined to be appropriate? It is *state law* that establishes the requirement for monitoring; the City Charter requires "substantial conformance...." with state law (City Charter section 556). Respondents actions of April 2 comply with neither.

To be clear, while it is literally true that the Framework Element need not expressly mandate compliance with state law or Responent City's own Charter (as both are required anyway), some planning document MUST. Respondents' actions in previously approving the dozen or more Community Plans that contain monitoring and reporting requirements are unequivocal evidence that the April 2 Resolution is ill-conceived and contrary to City's long-standing acknowledgment -- and implementation -- of state laws. What Respondents have done is to create an inconsistency within their principal planning documents, and in so doing apparently to ignore both City Charter mandates and applicable state law. Respondents' argument that it is "no harm no foul"

because the HCPU is not specifically mentioned is devoid of merit. Respondents' stated intention to "overrule and supercede" the Writ and Judgment of this Court could hardly be clearer.

The Court elects to address this matter at this time because Respondents' actions strongly indicate their view that they do not intend to comply with state law or the Orders issued by this Court; and that the documents ordered to be revised in this case will be materially flawed, further delaying resolution of this matter. By declaring that all Community Plans do not need to include monitoring and reporting elements, Respondents contradict the specific order of this Court that the Community Plan at issue in this proceeding -- that the HCPU must include monitoring policies or programs, and Respondents act in direct contraction to state law, the Charter of the City of Los Angeles, and the Writ of Mandate issued by this Court.

The Court holds that that portion of the April 2 Resolution which states or implies that the to-be-revised HCPU (and EIR, etc.) need not comply with the City Charter or state law, including but not limited to Public Resources Code section 21081.6, is contrary to law and to the Judgment and Writ issued by this Court on February 11, 2014. The resolution of Respondents adopted on April 2, 2014 is demonstrably arbitrary, capricious and without basis in law for these reasons and to this extent. Further, no reasonable person could conclude that adoption of the April 2 Resolution made the General Plan of the City of Los Angeles internally consistent; indeed the contrary is the case for the reasons stated.[13] Because the offending part of the Resolution cannot be

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[13] Having first argued that they can do what they did in adopting the April 2 Resolution, Respondents then acknowledge that their actions "do[] not prevent the Planning Department from also complying with a more specific reporting provision contained in any individual community plan." (Opposition at 13:11-13.) Yet, the April 2 Resolution specifically -- and in contradiction -- states that "[t]he Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs." Respondents never specifically acknowledge that they must comply with the Public Resources Code; and certainly appeared to denied that obligation at argument. Nor do they accept their own prior and long-standing practices. Even more telling, and as noted in the text above, is the introductory

severed from the balance, Respondents are therefore ordered to reconsider the April 2 Resolution in full.

To summarize: Respondents' compliance will ultimately be determined once they have filed the Final Return. At this stage in this litigation it does appear, however, that Respondent City Council's adoption of the April 2 resolution errs, inter alia, by suggesting that it need not redraft the HCPU, its EIR and related documents to provide appropriate monitoring or reporting programs; and Respondents' actions constitute a misstatement and misapplication of the City Charter, state law and the February 11, 2014 Judgment.

The Court of Appeal's discussion in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, is particularly cogent in this circumstance:

> "A public agency need not and should not await the compulsion of judicial decrees before fulfilling the demands of CEQA. In a related context a federal court has declared: 'To make faithful execution of this duty contingent upon the vigilance and diligence of particular environmental plaintiffs would encourage attempts by agencies to evade their important responsibilities. It is up to the agency, not the public, to insure compliance with (the environmental control statute) in the first instance.' (*City of Davis v. Coleman* (9th Cir. 1975) 521 F.2d 661, 678.) We indulge in this deliberate dictum for two reasons: first, to avoid any implication that compliance with our writ of mandate is the full measure of the Department's CEQA-imposed obligations, and second, to express this court's willingness to review legal sufficiency of the City's environmental report on groundwater extractions even though it is included within an EIR of larger scope.

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language to the Resolution, that it is intended to "overrule and supercede" the decision of this Court. Having failed to appeal this Court's decision, that course is foreclosed, at least pending the resolution of issues that may arise on consideration of the Final Return.

"We hold that the City's return to the writ of mandate issued as a result of our June 1973 decision fails to comply with the writ. This court has continuing jurisdiction to enforce the writ until it is fully satisfied. (Code Civ.Proc. sec. 1097; *County of Inyo v. City of Los Angeles, supra*, 61 Cal.App.3d at p. 95, 132 Cal.Rptr. 167.) The writ is not discharged but remains in force; the City of Los Angeles and its Department of Water and Power are directed to take reasonably expeditious action to comply with it." *Id.*, at 204-205.

The April 2 Resolution starts Respondents off on the wrong foot. It is best to act now to prevent further misallocation of resources and further, unnecessary delay.

Respondents may adopt any resolution they wish so long as it does not violate the Writ of Mandate issued in this case, its own Charter, or state law. Respondents should make operative the advice given to them by the court of appeal in *County of Inyo v. City of Los Angeles*, *supra*: "A public agency need not and should not await the compulsion of judicial decrees before fulfilling the demands of CEQA." *Id.*, at 204-205. It was good advice when the Court of Appeal recommended it to the City of Los Angeles in *County of Inyo*; it is equally good advice today.

Other issues. The matter has been resolved without the need to address other issues presented by the parties. These include La Mirada's objection to Respondents' reliance on a Notice of Exemption (that Notice is set out at Exhibit 33 to the Torgan Declaration) as the means to comply with CEQA in connection with its April 2 action on the Resolution of that date,[14] and La Mirada's contention that Respondents err in their

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[14] Respondents also err when they argue La Mirada cannot raise this issue because it has not alleged a violation of this statute in its petition. This proceeding now concerns the Return[s] to the Writ of Mandate issued by this Court; it is the right of any party to such a proceeding to raise issues of compliance in that context. City knows this well as it has been the subject of such compliance examinations in the past. The examples are numerous, resulting in multiple published decisions of appellate courts over time in the

interpretation and application of Government Code section 65759.[15]

Neither petitioner is deemed to have waived any of its arguments; whether they will need to be raised in connection with the Final Return is clearly unknowable at present.

La Mirada also moves to have the Court impose the statutory fine of $1,000 on Respondents as authorized by Code of Civil Procedure section 1097. The assessment is not mandatory and the Court declines to do so at this time.

SUMMARY OF ORDERS

Respondents elected not to appeal and to comply with the Judgment and Writ of Mandate issued by this Court on February 11, 2014. The actions Respondents have taken do not comply for the reasons set forth above.

The orders made above are *summarized* as follows:

1. Petitioner Fix the City's motion for leave to file its supplemental petition for writ of mandate is early and its request to file nunc pro tunc is unnecessary. This petitioner is to determine whether and how it wishes to proceed on its motion and give appropriate notice by August 15, 2014. If it proceeds, the hearing is now set on September 18, 2014 at 8:30 a.m.

2. As there has not yet been presented any authority to substantiate the filing of the Supplemental Petition without first obtaining leave of Court, Respondents' Motion to Strike Fix the City's Supplemental Petition is granted, without prejudice. The documents

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same matters, including but not limited to a matter involving Respondents and the County of Inyo: *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1; *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185; *County of Inyo v. City of Los Angeles* (1976) 61 Cal.App.3d 91; *County of Inyo v. Yorty* (1973), 32 Cal.App.3d 795.

[15] Thus, the Court need not resolve Respondents' claim that La Mirada filed its challenge to the Notice of Exemption after the expiration of the 35 day statute of limitations under Public Resources Code section 21167 and whether that statute applies in the context of proceedings to determine compliance to a Writ of Mandate.

filed by Fix the City nevertheless constitute notice to the Court of certain issues requiring consideration at the appropriate times to aid in determining Respondents's compliance with the Writ of Mandate and Judgment.

3. Petitioner La Mirada's Notice of Motion and Motion for Orders: (1) Maintaining Writ of Mandate in Full Force Until Fully Complied With; (2) Compelling City to Reconsider Its Return to The Writ Issued and to File an Additional Return to the Writ; (3) To Make Further Orders Necessary to the Writ; and (4) For the Court to Impose a Fine of up to $1,000 Against the City of Los Angeles per CCP section 1096 are ruled on as follows: (1) Granted, (2) Granted, (3) Denied without prejudice and (4) Denied without prejudice.

4. Each Writ of Mandate will be amended to clarify the timing of filing of the Final Return and of objections to it, and to specify additional procedures.

The complete text of these orders is set forth in the body of this Ruling.

DATED: JULY 14, 2014

ALLAN GOODMAN
JUDGE OF THE SUPERIOR COURT