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September 5, 2017

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**Re: LPAB Authority Regarding 41 Tunnel Road; Claremont Hotel - Club
Expansion and Residential Project**

Dear Members of the Board and Mr. Weintraub:

This office represents the Claremont Preservation Coalition. I write on its behalf regarding the scope of this Board's authority—vis-à-vis Planning Department staff—to review and comment on environmental documents prepared for the Claremont Hotel - Club Expansion and Residential Project. At your June 12, 2017, meeting, this project appeared as Item 6.2. A transcript of the Board deliberation portion of this meeting (i.e., the portion following public comment) is attached for your convenience.

The reports referenced are the Historic Resource Evaluation by Carey & Co. (draft HRE) and the Supplemental Memorandum to HRE by LSA Associates (draft Supplemental Memorandum). The draft HRE and draft Supplemental Memorandum assessed the integrity of the designated Claremont historic property. In 2003, this property was found eligible for listing in the National Register of Historic Places and was listed in the California Register of Historical Resources. Also in 2002, the City landmarked the hotel building and in 2003, applied S-4 zoning to the remainder of the designated historic property.

The May 8, 2017, Staff Report for this project requested that the Board approve the “validity” of the “methodology, findings and conclusions contained in the draft HRE and the Supplemental Memorandum, as considered separately and together” (May 8, 2017, Staff Report, pp. 1-2), and to “Provide comments on the accuracy, completeness, and findings of the draft HRE and the draft Supplemental Memorandum, as considered separately and together, prior to finalization” (Staff

Report, p. 10).

Staff's request for this Board to approve these reports was an attempt to enlist this Board in an effort to pre-judge the historic resource impacts of the Project that must be resolved in the EIR process. As I wrote in my June 9, 2017, letter, the reports "represent an improper attempt to segment environmental review, to prematurely certify a portion of EIR, to have this Board certify a portion of EIR when this Board lacks authority to do so, and to prematurely make findings regarding the significance of the Project's impacts on historic resources."

Many members of the public, including my June 9, 2017, letter, pointed out that these reports erred by dividing the property into separate pieces and analyzing the "integrity" of each piece in isolation, and by ignoring the most important component of the site's integrity, which is its openness and lack of competing buildings. As a result of these errors, these reports attempt to downgrade the historic resource value of two portions of the historic property already determined to be eligible for listing in the National Register and listed in the California Register (i.e., the newly renamed "Formal Gardens" and "Auto Court & Driveway"). The reports find these two areas have lost "integrity" such that they no longer qualify for these listings. The Supplemental HRE then proposes to codify these errors by proposing a new historic district that would exclude portions of the existing designated historic property, and restrict its boundaries.

Several Board members expressed serious concern that the draft HRE and draft Supplemental Memorandum failed to consider the open space qualities of these portions of the site and thereby inappropriately supported the developer's effort to change and reduce the historic property's boundary. Yet, despite staff's request for this Board to approve the "validity" of the "methodology, findings and conclusions contained in the draft HRE and the Supplemental Memorandum, as considered separately and together" (May 8, 2017, Staff Report, pp. 1-2), when Board members attempted to formalize their concerns in a motion, staff interrupted and obstructed those efforts. Several examples of this can be seen in the attached transcripts. (See Transcript, 18:19-19-6; 22:18-22.) One example is:

MS. KOMOROUS: Could I propose a motion, based on that?

CHAIRMAN ANDREWS: Yes.

MR. WEINTRAUB: Pardon me, point of order. We're actually not asking the board for a motion, we're just asking for individual board member comments. So we're not actually asking for a motion. There's no action to be taken here. I think that's one of the key maybe confusing -- elements is that we have -- you know, we have presented this draft report, which is usually only presented at the environmental review stage, but we've tried to get ahead of the game by trying to get some of this information out there for the board to review.

(Transcript, 18:19-19-6.)

This statement by staff presupposes that this Board is constrained in the performance of its

legal duties by what staff asks it to do. This is incorrect. The mandate of this Board under the Oakland Planning Code is clear: to “advise and assist the City Planning Commission and the Director of City Planning, as well as other public agencies, civic groups, and the general public, on the matters described in Section 17.03.020.” (Planning Code § 17.05.090). Planning Code section 17.03.020 provides, in part:

The City Planning Commission shall have and exercise the following powers. It shall be advised and assisted in the exercise of these powers by the Landmarks Preservation Advisory Board.

A. Regulatory Protection. As specified in the Zoning Regulations, the Commission may recommend structures, other physical features, sites, and areas to be given regulatory protection, and in certain cases shall review development proposals where such protection has been established by the City Council.

B. Contracts with Property Owners. The Commission may negotiate with owners of properties having special characteristics for, and may recommend to the City Council the approval of, contracts to restrict the use of such property and to retain such characteristics.

C. Recognition of Merit. The Commission may establish and maintain a list of structures, other physical features, sites, and areas considered deserving of official recognition although not given regulatory protection. The list may also include facilities, sites, or areas which are given regulatory protection. The purposes of the list shall be to recognize the merit of and encourage the protection, enhancement, perpetuation, and use of such structures, other physical features, sites, and areas. For these purposes, the Commission may authorize such steps as it deems desirable, including but not limited to the issuance of certificates of recognition and the authorization of plaques. The Commission, through the Director of City Planning, shall coordinate these efforts with any similar efforts of appropriate governmental agencies and private groups interested in preservation.

D. Inventory and Evaluation. The Commission may carry out or assist or encourage studies and programs designed to identify and evaluate structures, other physical features, sites, and areas which are worthy of preservation. It may inspect and investigate structures, other physical features, sites, and other areas which it has reason to believe may be worthy of preservation.

E. Consultation. The Commission may consult with, advise, and consider the ideas and recommendations of civic groups, public agencies, and citizens interested in preservation.

F. Information and Advice. The Commission may disseminate information to the public concerning worthy structures, other physical features, sites, and areas. It may encourage and advise property owners in the protection, enhancement, perpetuation, and use thereof.

G. Other Powers. The Commission may consider methods other than those described above for encouraging and achieving preservation of worthy structures, other physical features, sites, and areas. It may explore means of financing the

restoration or maintenance thereof. It may make appropriate recommendations on the general subject of preservation to the City Council, other public and private agencies and bodies, and the general public.

Nowhere does the Planning Code limit or restrict the actions this Board can take to discharge its responsibility to advise the Planning Commission on the matters specified in section 17.03.020. Nor does the code require that this Board only adopt motions when asked to by staff.

Contrary to staff's statement that "There's no action to be taken here," the staff report does in fact ask the Board to take action, i.e., to approve the "validity" of the "methodology, findings and conclusions contained in the draft HRE and the Supplemental Memorandum, as considered separately and together." (May 8, 2017, staff report, pp. 1-2.) But when it became clear that the Board's view of these reports differed sharply from staff's view, staff beat a hasty retreat and advised the Board that it should not adopt a motion finding the reports' methodology, findings and conclusions to be *invalid*. This obstruction is inappropriate in light of this Board's legal mandate.

Another example is:

MR. WEINTRAUB: So just points of information. This board has no authority over the national register boundary or the California register listing boundary, so the motion -- a motion to not change or affirm those is really -- it's moot.

(Transcript, 22:18-22.) This is pure obfuscation. The fact that this Board does not have final authority over boundary determinations already made by the National Keeper and state Office of Historic Preservation does not prevent this Board from adopting a motion to advise the Planning Commission as to what the Board thinks these boundaries should be. Obviously, the City of Oakland, and its Planning Commission, and therefore, this Board, have a role in submitting comments to the state Office of Historic Preservation and the National Park Service regarding the listing of historic properties. If staff's interpretation were correct, this Board could never adopt a motion to advise the Planning Commission of its views regarding any historic property because this Board does not have final authority over the disposition of such properties. This position is obviously absurd.

While the enclosed transcript contains more examples, the examples noted above illustrate the problem well.

The Claremont Preservation Coalition hopes this letter proves useful to you when this Project returns to your agenda.

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Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

Enclosure: Partial Transcript of June 12, 2017, LPAB Meeting.

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