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By Email (wgilchrist@oaklandnet.com)

**Due Process Concerns re LPAB Consideration of
Historic Resource Evaluation (“HRE”) & Memorandum for
PLN16053, 41 Tunnel Road (Claremont Hotel)**

Dear Director Gilchrist:

We have been retained by the California Environmental Quality Group, in connection with its participation in the Landmarks Preservation Advisory Board’s (“LPAB”) consideration of the above-referenced project (“Project”). We write to express our clients’ significant concerns regarding Staff’s presentation to the LPAB at its May 8, 2017 hearing on the Project, and Staff’s subsequent interference with the deliberations of the LPAB at the continuation of that hearing on June 12, 2017. We believe that the admonitions and directions given by former planner Matt Weintraub to the duly appointed members of the LPAB and Staff’s interference with their due deliberations were both inconsistent with Mr. Weintraub’s role as Secretary of the LPAB and an infringement on the scope of authority of the LPAB members. It was, therefore, an undue curtailment of the public’s right to transparent and independent governance.

As discussed in greater detail below, Staff overstepped its role and did a great disservice to the public by:

1. Misleading the LPAB about which resources had *already* been designated as historical and the effect and significance of the HRE.
2. Misleading the LPAB about the scope and gravity of what they were being asked to do, i.e., of accepting the HRE as-is.
3. Interfering with the LPAB and attempting to prevent it from duly exercising its authority.
4. Inappropriately identifying with and advocating for what was best for the developer of the Project over what had already been determined in previous official findings to be in the best interests of the public.

The public deserves, and LPAB members are entitled to, an unbiased and honest explanation of any project being presented to the LPAB for its consideration. It is our understanding that the Secretary's function is to accurately summarize and clarify the project under consideration, advise without bias when a contentious development is being considered, and allow the LPAB to duly deliberate and make motions without interruption and interference. None of this occurred at the hearings in question.

At the May 8th hearing, Staff presented a slideshow suggesting that previous evaluations of the historical resource boundaries were at odds with each other, that no one was currently proposing "any changes to the existing historic property evaluations or designations," and that no decision was being asked of the LPAB Board. None of these assertions were remotely accurate.

At the June 12, 2017 hearing, Staff (chiefly Mr. Weintraub) asked the Board to accept, approve and finalize the HRE and Memorandum concerning the Claremont Hotel and surrounding areas, which are already clearly designated as a state historical resource.

Through omission and misrepresentation of historic documents, the HRE erroneously claimed a "clouded understanding of . . . the qualified historical resource(s) that currently exist on the property." The authors of the HRE asserted that the state Office of Historic Preservation ("OHP") did not intend to include the South Parking Area within the boundary of the National Register of Historic Places ("NRHP") nomination. Both claims are patently false, as documented at the meeting by members of the California Environmental Quality Group, and others.

The HRE also recommended formation of a new so-called "historic district" to replace the current 12.1-acre resource – a district excising the South Parking Area. The current boundary includes setting and open space deemed integral to the historic landmark by several government bodies, and so deemed by the LPAB during prior development considerations. In fact, the City of Oakland has previously rejected a number of inappropriate development schemes for the Claremont Hotel property going back to the 1950's.

The parties who commissioned and funded the HRE are the owners of the Claremont Hotel and Spa. Not coincidentally, the South Parking Area, being proposed for removal from the historical resource, is where they intend to build a 43-unit condominium complex and one new single-family residence. This is the area that, through deliberate deception, the HRE proposed to strip of protections for historic resources.

1. Misleading the LPAB about which resources had *already* been designated as historical and the effect and significance of the HRE.

At the outset of the June 12, 2017 LPAB hearing, in response to the Chair's questions regarding where the process stood, Mr. Weintraub stated: "...the purpose of this

meeting is to review and comment on this one – one technical document which would ultimately provide baseline information for the further review process.”

Further misrepresentations were made to the LPAB when he asserted that the HRE “does not result in any new historic property designations – so we’re not taking away designations, we’re not adding designations.” On the contrary, it is fair to summarize the whole thrust of the HRE into a single purpose: the creation of a new “proposed Historic District.” This district would excise from the area listed as a State Historical Resource by the Office of Historic Preservation (and confirmed by the National Registry of Historic Places) exactly that portion of the grounds where the project developer wishes to locate its condominium complexes.

If accepted, the HRE recommendation could be used in a formal process to remove CEQA protections, such as required evaluation of the impact of the Claremont’s proposed condominium towers on the 12.1 acres surrounding the landmarked hotel. Revising or accepting as final the HRE “as-is” was, in fact, a substantive decision, which Staff repeatedly minimized to the point of misrepresentation. Had the LPAB accepted the HRE — with its findings and recommendations “as-is” — such a decision could have been used in a formal process to change or remove the resource from the National and California Registers through a process overseen by the State Office of Historic Preservation.

2. Misleading the LPAB about the scope and gravity of what they were being asked to do, i.e., of accepting the HRE as-is.

During Staff’s presentation, Mr. Weintraub claimed “there are no decisions that are actually being considered or weighed tonight.” Yet, at the end of his remarks, he revealed that the purpose of the hearing had been “to receive comments from the Landmarks Board and the public on the documents [HRE, including a Supplemental Memorandum] and make any necessary changes.” He also explained that the LPAB’s task was to “finalize the technical documents as baseline information for the next steps, which are to conduct the CEQA environmental review and the project review.”

Establishing the scope of environmental review and designating (or not designating) historical resources are clearly decisions that the LPAB was being asked to consider and those decisions carried significant impacts with respect to the future course of the subject project. It was apparent that with such contradictory instructions, the LPAB members struggled to understand what was being asked of them. Further, by minimizing the scope and nature of what the LPAB was being asked to perform, Staff’s presentation appeared as an attempt to conceal the importance of the LPAB’s task, namely to establish what was and was not a historical resource.

3. Interference with the LPAB and attempts to prevent it from duly exercising its authority.

At the conclusion of the public comments on June 12, 2017, the LPAB members deliberated and attempted to consider revisions to the HRE. This was, after all, what

they had been asked them to do. Member Joiner requested and clarified with the LPAB Chair "...since we're not proposing a 'historic district boundary,' if we can take that [label] off of future documentation?" At this point, Mr. Weintraub interjected, denying that anything new was being proposed and prevented Member Joiner from making her request, stating: "the purpose of a historic resource evaluation is to determine what type of historic resource may be present and what the characteristics of that – of that resource are and what the extent of that resource is. And based on the existing documentation prior to the HRE being developed, there was a lot of disagreement and there wasn't clarity as to what that... extent was. There was disagreement. So, the historic resource evaluation, um, any historic resource evaluation is going to use the terminology 'proposed' when it comes to a conclusion. This resource evaluation also concluded that there is an eligible district on the property, which the previous evaluations hadn't concluded. So, that's the reason that terminology is used."

Member Komorous questioned this assertion that the draft HRE was not proposing any "changes to the historic property evaluations of designation." Mr. Weintraub replied, inaccurately (and it appears disingenuously), that the document was "assessing and evaluating the findings of previous documents and coming to its own conclusions but it is not proposing to make any changes to any previously designated or evaluated historical resource."

Several LPAB members wanted to reject the HRE's new "proposed Historic District" that undermined the legitimacy of the boundary established by the state OHP. Member Komorous, attempted to make a motion to affirm the existing historic boundaries, a pointed rejection of the new 2017 "proposed Historic District" Staff supported. Mr. Weintraub interrupted Member Komorous repeatedly as she tried to formulate this motion, and gave the LPAB an admonition that they could not consider any such motion. He stated that "staff has said that we are not proposing to change any of the existing designations or boundaries or previously identified resources. There's – none of those are proposed to change." Again, this was not true. As the Chair of the LPAB pointed out to Mr. Weintraub: "one of the things that's confusing to me about that is you've – you've emphasized that nothing's being proposed but then there, if I look at LSA's response, what they mark in red, it says, 'Proposed historic district boundary, 2017.'"

While the LPAB finally succeeded in proposing, seconding, and passing a motion rejecting the HRE as insufficient and requesting that a historic landscape architect be consulted, Staff found a way to prevent Commissioner Komorous from articulating, and the board voting upon, a motion to affirm the LPAB recommendations of 2002 and the boundaries of the state historical resource, which include 12.1 acres surrounding the landmarked hotel. (The 12.1 acres were also recognized by the Oakland City Council and Planning Commission, which after designating the hotel building as a city landmark applied a design review-combining zone to the surrounding 12.1 acres in 2002.)

4. Inappropriate identification with and advocacy for what was best for the developer of the Project over what had already been determined in previous official findings to be in the best interests of the public.

It appeared to our clients and the public generally that once Staff realized that the LPAB's inquiry was leading it in a direction opposite to what the project developer desired, and that the LPAB would indeed affirm the existing historical resource boundaries that the developer wanted altered, Staff tried to prevent the LPAB from exercising its deliberative function. The record is clear that Staff fought to prevent the LPAB from going on the record and rejecting the proposed, newly truncated district.

This identification of Staff with a project developer is an improper blurring of the bright lines that separate Oakland city government and private, for-profit developers.

We also register disappointment with Carey & Co. who produced the proposed HRE, which misrepresented historical resource documents by selectively quoting and developing false conclusions from them. Since the developer is paying Carey & Co., perhaps this should not come as a surprise. We further relay our clients' dismay with the work of the LSA firm, which did not find and note the HRE's deep flaws in its "peer-review." A public speaker, Janet White, professionally familiar with the peer review process by dint of her many years as executive editor of a UC scientific journal noted: "peer reviewers should provide independent analysis of the research and thoroughly examine evidence and the original documents cited. Does the research conform to professional standards? Do the authors provide valid evidence to support the work? Is the data presented of high quality and has it been analyzed correctly? If the analysis is incorrect, what should the authors do to correct this? If particular areas are weak or are absent in the evaluation, especially if the authors omit relevant text and misrepresent conclusions of public agencies, it should be called out." Clearly, the "peer review" process conducted here bore no resemblance to those standards.

In Staff's presentation, Mr. Weintraub stated that: "The City had [the HRE] peer reviewed by our environmental consultant, LSA, and also supplemented by LSA, because we thought that Carey and Company had essentially 'taken the ball to the ten-yard line' and we asked LSA to 'bring it over the goal line' for us, and that's essentially what they did in their memorandum." The "we" here seems to be the developer in tandem with the planner, not the "we" that should be the people of Oakland. LSA seemed to be carrying the ball for the team paid by the developer. Rather than striving for accuracy and truth, LSA rubber-stamped Carey & Co.'s flawed document and added its own recommendation to establish a new "Historic District." Staff's description of the "peer review" as carrying the ball, i.e. the new "Historic District" into "touchdown territory," underlines the dismaying lack of critical application that the LSA peer-review manifested.

What are citizens to make of a situation in which the developer hires a firm which submits an historical evaluation tailor-made to suit its interests, the City “peer review” fails to investigate its accuracy, and then, when the evaluation is presented, the planner attempts to browbeat the LPAB into acceptance, rather than developing and passing motions as they see fit, in this case rejecting the flawed HRE and affirming that the Claremont Hotel grounds as recorded in the State and National registers are worthy of historical preservation?

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For all of these reasons we believe that the HRE should be redone so that it correctly notes the clarity with which the landmark boundaries have been ruled and agreed upon in the past. It should underline and affirm the consistent acceptance of the boundaries of the landmark that include the South Parking Area. The peer review of the HRE should, likewise, be redone. Reasonable peer review standards should be applied. The LPAB should be permitted to reconsider the revised HRE, deliberate appropriately, and come to their own conclusions; the public should be permitted to attend the deliberations and provide comment. We look forward to seeing revisions to the subject documents and learning of the evaluation of the historic landscape architect.

Thank you for your attention to and assistance with this matter.

Very truly yours,



Joshua Safran

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