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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

12 FIX THE CITY, INC., a California  
13 nonprofit corporation,  
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Petitioner and Plaintiff,

v.

CITY OF LOS ANGELES, a municipal  
corporation; LOS ANGELES CITY  
PLANNING COMMISSION;  
VINCENT P. BERTONI, in his capacity  
as Director of City Planning for the City  
of Los Angeles; and DOES 1 through  
100, inclusive,  
Respondents and Defendants.

ELLIOT NAYSSAN; ROBHANA, INC.;  
NHD TERRACE, LLC; and ROES 1  
through 100, inclusive,

Real Parties in Interest.

Case No. 19STCP03740  
Related to Case No. 20STCP01569  
Related Case No. 20STCP03529

Assigned for All Purposes to the  
Hon. Mitchell L. Beckloff, Dept. 86

**PETITIONER'S OPENING BRIEF ON  
PROJECT SPECIFIC ISSUES**

Dept.: 86  
Trial Date: July 14, 2021  
Time: 9:30 a.m.

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1 **INTRODUCTION**

2 In Fix the City’s Opening Brief on Issues Related to the Transit Oriented Communities Program,  
3 Petitioner explained that the approval of the project proposed by Real Parties in Interest Elliot Nayssan,  
4 Robhana Inc., and NHD Terrace LLC (“RPIs”) was improper because it relied upon departures from the  
5 Los Angeles Municipal Code that were not authorized by the City’s voters in Ordinance Initiative  
6 Measure JJJ. The voters were told that any changes to Measure JJJ would be by a vote of the people,  
7 and no such vote occurred. These so-called discretionary incentives were instead adopted by the City  
8 Planning Department, and served to allow the project at 10400 Santa Monica Boulevard (“the Project”)  
9 significant increases in permissible height along with reductions in open space and required setbacks  
10 from the property line. Because the Project’s entitlement relies upon these improper incentives, the  
11 approval is void.

12 The Project’s approval has another fatal error. In approving the Project, including specific site  
13 layout and building massing, the City Planning Commission failed to consider the black letter  
14 requirements of the state law known as the Alquist-Priolo Earthquake Fault Zoning Act (“Alquist-Priolo  
15 Act”). The Alquist-Priolo Act is a critical public safety law designed to reduce the risk to life and  
16 property from surface fault ruptures along faults and traces of faults. Once the state has mapped a zone  
17 in which surface fault traces have been identified, the law prohibits the construction of structures for  
18 human occupancy across fault traces or within 50 feet of fault traces. The statute requires local  
19 governments to impose these requirements on all non-exempt projects. The Project’s approvals violated  
20 the requirements of this public safety law.

21 The Respondent City of Los Angeles (“the City”) has adopted policies to implement the Alquist-  
22 Priolo Act, but did not follow those policies here. The Project is located in a Alquist-Priolo Earthquake  
23 Fault Zone or Zone of Required Investigation. Yet there was no investigation beyond the boundaries of  
24 the property to determine whether fault traces could be present within fifty feet of the site. In the  
25 absence of such investigation under both state law and city policy, a fault trace at the property boundary  
26 is assumed to exist, and both state law and City policies require that a structure for human occupancy be  
27 set back 50 feet from the property line. No such requirement was imposed here. Indeed, the incentive to  
28 reduce the required sideyards that the Project was awarded has the effect of allowing construction even

1 *closer* to the property line, where a fault trace is presumed. The City’s approval of a project that failed  
2 to comply with the Alquist-Priolo Act is an abuse of discretion, a dereliction of the city’s responsibility  
3 to protect its citizens from harm, and must be set aside.

4 **STATEMENT OF FACTS**

5 The 10400 Santa Monica Boulevard project is a seven-story, 120-unit residential building with  
6 12 units set aside for Extremely Low Income households. (AR0838.) The project is located on five  
7 vacant lots measuring 25,869 square feet. (AR0848, AR0510.) The General Plan designation for these  
8 properties is General Commercial, and the zoning is C2-1VL, the “VL” being a height district with both  
9 density and height limitations. (AR0848, AR0438, AR0369.) With the property’s underlying zoning,  
10 the by-right unit count would be 71 units. (AR0440.) The zoning limits the floor area ratio to 1.5:1.  
11 (AR0441.) Height is limited to 45 feet, but under Los Angeles Municipal Code 12.21.1 B 2, due to the  
12 property’s slope, which exceeds grade level by more than 20 feet, it is generally is entitled to an extra 12  
13 feet in height. (AR0594.) Neighboring residential properties are generally low-rise and around 4 stories  
14 in height. (AR0772-773, AR1428.)

15 The area in which the Project is located is a mapped Alquist Priolo Earthquake Fault Zone.  
16 (AR0784; see also Request for Judicial Notice (“RJN”) Exh. 2 [Beverly Hills Quadrangle Earthquake  
17 Fault Zone Map].) The state issued its official map in January 2018, prior to the approval of the Project.  
18 (*Ibid.*) Even before the state had formally issued the maps, the project’s location was deemed a  
19 “Preliminary Fault Rupture Hazard Study Area,” and the City has required fault studies for construction  
20 in this area since 2013. (AR1316.) The fault and fault traces in the general area were documented by  
21 Metro in connection with the construction of the Purple line in Century City. (See AR0784-785  
22 [referencing and incorporating by reference Metro’s Environmental Impact Report for the Purple Line];  
23 see also AR1330 [RPI report citing Parsons Brinkerhoff November 30, 2011 study “Century City Area  
24 Fault Investigation Report, Westside Subway Extension Project.”])

25 The applicant and City were aware at the time that the project’s Geologic Fault Study Report was  
26 prepared in late 2016 and that the property would be included in the official state Alquist Priolo  
27 Earthquake Fault Zone when the zones were made public in 2017. (*Ibid.*) An Alquist Priolo Earthquake  
28 Fault Zone is an area mapped by the California State Geologist to demarcate locations of the trace of a

1 fault at the earth’s surface, which can cause what is known as a surface fault rupture, an event that can  
2 severely damage structures and pose a risk to human life.

3 Real Party in Interest submitted a “Geologic Fault Study Report” to the Los Angeles Department  
4 of Building and Safety in December 2016. (AR1313.) The applicant did not utilize trenching in its  
5 study, even though “trenching is the most direct method of conducting an earthquake fault study,” and  
6 the property is entirely vacant without a structure on it. (AR1318, AR0510.) Instead, the applicant’s  
7 study included a series of seven “Cone Penetrometer soundings” and two “continuous core borings.”  
8 (AR1319.) All of the Cone Penetrometer soundings were along a north-south transect within the bounds  
9 of the property, roughly along a nearly central axis. (AR1332.) There were no study points located near  
10 the eastern or western edges of the property. There was also no study at all beyond the site boundaries:  
11 “Because of space constraints, our fault investigation did not extend 50 feet north of the northern  
12 property boundary and 50 feet south of the southern property boundary, as is requested by the city and  
13 CGS [California Geologic Survey] for fault investigations in general.” (AR1325.)<sup>1</sup> The study claimed  
14 that the “local access” route south of Santa Monica Boulevard is “roughly 30 feet wide,” and “drilling in  
15 the alley was complicated by the presence of several utilities, including gas and sewer.” (*Ibid.*)  
16 Moreover, “the alley south of the site is only 20’ wide, making drilling 50 feet directly south of the site  
17 impossible.” (*Ibid.*) No drilling was conducted even within the 20 foot wide alley, however.

18 The study contended that it utilized studies conducted from properties “directly west” and  
19 “directly north” of the subject site (AR1316-1317), but it should be noted that both of these previous  
20 studies are located multiple city blocks distant from the project site (AR1331). Based on the findings of  
21 the on-site survey, and “review of prior investigations by others as well as several published and  
22 unpublished maps and reports,” the geologists concluded that “the site is not underlain by the Santa  
23 Monica fault or fault splay.” (AR1325.) However, because “exploration was confined to the subject  
24 property limits. . . [it was] not able to distinguish or refute the existing evidence of faulting within 50  
25 feet of the property boundaries, as is *required* by the city.” (AR1325 [emphasis added].) Therefore, the  
26 investigation provided that “we must recognize the possibility of the existence of the fault or fault splay  
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28 <sup>1</sup> By contrast, Metro conducted numerous studies throughout the area just east of the Project that  
were similarly dense. (AR0784-0785 [see RJN, Exh. 1 for clearer copy of these images].)

1 within less than 50 feet of either property boundary, or just beyond the explored areas.” (AR1325-1326.)  
2 Because of this uncertainty the report recommended that unless study off site were conducted “a thick  
3 slab ‘mat’ foundation should be utilized, as a form of engineered mitigation against fault rupture within  
4 close proximity to the proposed building.” (AR1326.)

5 On February 2, 2017, the Los Angeles Department of Building and Safety issued a “Geology and  
6 Soils Report Approval Letter.” (AR1433.) The letter stated that the applicant’s report was “acceptable,”  
7 but required a supplemental report to be submitted after excavation for the project was complete, and  
8 that a design-level geotechnical/soils report must be submitted to the Grading Division for  
9 recommendations for the proposed development. (AR1434.) The City’s letter did not require any off-  
10 site study as a component of future approvals.

11 The project application was originally submitted in January 2017, proposing a 96 unit, 5 to 6  
12 story apartment complex setting aside eight units for low income residents. (AR0393.) This project was  
13 to be constructed under the density bonus program Los Angeles Municipal Code 12.22 A 25, with a 35  
14 percent density bonus, an on-menu height increase of 11 feet, and an on-menu incentive with a 3:1 floor  
15 area ratio, all of which are specifically included in the code. (AR0394.) The project required Site Plan  
16 Review under Los Angeles Municipal Code 16.05. (*Ibid.*)

17 At some point after the original submission, the applicant revised its plans and application to  
18 proceed instead under the Transit Oriented Communities (TOC) program. The TOC Referral form was  
19 approved by a City Planning Associate in October 2018. (AR0432.) The new project description  
20 proposed as “6- to 7- story, maximum 79-ft in height, 120-unit apartment building, including 12  
21 [Extremely Low Income] Units containing 169 vehicle parking spaces and 66 bicycle parking spaces.”  
22 (AR0433.) The application checks the box for “Additional Incentives,” (not for Base Incentives),  
23 requesting 22 feet in increased height, reduced sideyards of 5 feet, and a 25% reduction in open space  
24 provided. (AR0433.) Site Plan Review was still required. (*Ibid.*)

25 The project will provide a mix of 25 studio apartments, 70 1-bedroom units, 23 2-bedroom units,  
26 and three 3-bedroom units. (AR0597.) It will provide 169 parking spaces on the street level and two  
27 subterranean levels. (AR0465.) As the City Planning Commission observed, this number of parking  
28 spaces far exceeds the 60 required spaces under the TOC Guidelines. (AR1927.)

1 The project is located within 2,640 feet from the intersection of Metro Bus and Rapid Bus lines,  
2 and the future Purple line Century City stop will be just within 2,650 feet. (AR0849.) It qualified for  
3 Tier 3 incentives under TOC Guidelines.<sup>2</sup> (AR0850.) The Project received “base incentives” of a  
4 density increase, increased floor area, and reduced parking, *as well as three additional incentives*.  
5 (AR0840-841.) The Project included the following “incentives” from the TOC Guidelines: (1) a 70-  
6 percent density increase; (2) a floor area ratio of 3.75:1; (3) a decrease in required parking to 0.5 spaces  
7 per unit; (4) reduced sideyards from 10 feet to 5 feet (50-percent reduction); (5) height increase of 22  
8 feet plus 12 feet due to the slope of the lot, from 45 feet to 79 feet; (6) reduced open space from 12,725  
9 square feet to 9,948 square feet. (AR0840-841.)

10 The Project was approved by the Director of City Planning in a Director’s Determination on  
11 January 17, 2019. (AR0579.) On February 1, 2019, the approval of the project was appealed by a  
12 neighboring resident and a homeowners association. (AR0637.) On February 13, 2019, Petitioner Fix  
13 the City submitted correspondence objecting to the approval and noting that even though it had  
14 requested notification of a decision, it had not been provided one. (AR0665.) Both Fix the City and the  
15 appellant raised concerns regarding the location of the project in a mapped Alquist Priolo Earthquake  
16 Fault Zone. (AR0641, AR0694-695.)

17 In May 2019, Fix the City submitted additional comments specifically on earthquake fault zone  
18 issues. (AR0782-792; see also RJN, Exh. 1 [clearer copy of Fix the City letter].) Fix the City’s  
19 comments noted that there had been no study offsite to preclude the presence of fault traces within 50  
20 feet of the structures. (AR0787.) Reviewing studies mapped in connection with the nearby construction  
21 of the Metro line, Fix the City’s comments observed that Metro’s studies located several faults which, if  
22 extended, would closely approach or possibly traverse the site. (AR0784.) Fix the City also noted that  
23 in just the few weeks prior to the date of its letter, there were six seismic events in the area near the  
24 Project site. (AR0786.) Fix the City’s letter also observed that the single transect did not include any  
25 observation points at either the eastern or western border of the site and as such that a fault trace that  
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27 <sup>2</sup> As set forth in Petitioner’s Opening Brief on Issues Associated with the Transit Oriented  
28 Communities Guidelines, Measure JJJ does not authorize the creation of Tiers as established in the TOC  
Guidelines.



1 transected the property on angle east or west of the single transect would be missed by that analysis.<sup>3</sup>  
2 (AR0788.) Finally, Fix the City observed that the project side is located at the beginning of a significant  
3 increase in elevation that continues westward along Santa Monica Boulevard until the Latter Day Saints  
4 Church, which the applicant’s study observed is “the most prominent and visible fault scarp of the Santa  
5 Monica fault zone in this area.” (AR0788 [quoting AR1320-1321].) The letter noted the prominent and  
6 steep increase in topography at the western edge of the property. (AR0788; see also AR0517.)

7 The City Planning Commission held a hearing on May 9, 2019 to consider the appeal of the  
8 Director’s Determination to approve the Project. Staff presented responses to points raised by the  
9 appellant, including on Alquist-Priolo issues. Staff stated that “[t]he Fault Zone Act requires stringent  
10 geological investigation due to the potential significant geologic soils effect. The proposed project has  
11 conducted a geological fault study dated December 22, 2016, which has been reviewed and approved by  
12 the Department of Building and Safety Screening Division. The potential for fault rupture has been  
13 tested for and analyzed in conformance with regulatory requirements.” (AR1913:15-22.) The  
14 applicant’s geologist very briefly described the study, and then alleged that the Chief Geologist from  
15 Building and Safety had “asked for a couple more borings, closer to the property boundaries, and we did  
16 that.” (AR1921.) There is no evidence of this request or response to the request in the record or in the  
17 Building and Safety approval letter. Moreover, in spite of Fix the City’s comment letter, there was no  
18 discussion of off-site investigation. The CPC’s debate focused on the amount of parking provided by  
19 the Project, one stating that “I do think it’s a bit disheartening to even label this a transit-oriented  
20 project, when it’s not,” (AR1927:19-21) and another calling the Project “grossly overparked” (*id.*:24).  
21 The CPC approved the Project on the condition that the Project not provide parking in excess of City  
22 code. (AR1934:19.)

23 On June 3, 2019, the CPC issued its Letter of Determination, containing modified conditions of  
24 approval for the Project. (AR0838.) The Conditions of Approval note that “the project shall be in  
25 substantial conformance with the plans and materials submitted by the Applicant, stamped “Exhibit A.”  
26 (AR0840.) “Changes beyond minor deviations required by other City Departments or the LAMC may

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28 <sup>3</sup> Similarly, a fault trace entering at a diagonal from the south would also not necessarily be captured by this single transect.

1 not be made without prior review by the Department of City Planning, Expedited Processing Section,  
2 and written approval by the Director of Planning.” (*Ibid.*) Modifications by Building and Safety that  
3 “affect any part of the exterior design or appearance of the project . . . shall require a referral of the  
4 revised plans back to the Department of City Planning for additional review and sign-off prior to the  
5 issuance of any permit in connection with those plans.” (AR0843.) Critically, the Conditions of  
6 Approval do not include any reinforced foundation requirements for seismic concerns.

## 7 **ARGUMENT**

### 8 **I. THE PROJECT’S APPROVAL RELIES UPON DEPARTURES FROM THE** 9 **ZONING CODE INCLUDED IN THE TOC GUIDELINES AND NOT IN ANY** 10 **ORDINANCE**

11 The Project’s approval relies significantly on the discretionary additional incentives included in  
12 the TOC Guidelines. First, the Project is receiving six incentives: increased density, increased floor  
13 area, decreased parking, increased height, reduced sideyards, and reduced open space. Measure JJJ  
14 provides that a project “may be granted up to either two or three incentives or concessions based on the  
15 requirements set forth in California Government Code Section 65915(d)(2).” (AR0020.) Measure JJJ  
16 does not authorize two or three “additional incentives,” beyond a base three incentives, so the award of  
17 six incentives is inconsistent with the ordinance.

18 The “additional” incentives violate the provisions of ordinances included in the Municipal Code.  
19 For instance, the Project’s C2-1VL zoning includes the 1VL height district, which is one of the more  
20 restrictive height districts in commercial zones. (AR0369.) The height district limits both overall height  
21 *and* floor area. (*Ibid.*) Height is limited to 45 feet, and overall floor to area ratio is limited to 1.5 to 1.  
22 (*Ibid.*) While this particular site is entitled to 12 additional feet of height due to the slope of the  
23 property, the maximum permissible height with this addition is 57 feet.

24 The Project’s height is 22-feet higher than permitted by the base 45 foot height limit and the 12  
25 additional feet. (AR0841.) This increase in height would have required a height district amendment,  
26 absent the improper “Additional Incentive” for height. (AR0369.) Changing to a height district such as  
27 the 1L or 2 would have required an approval under Los Angeles Municipal Code section 12.32, along  
28 with a public hearing and decision by the City Council.

The Project also violates other generally applicable zoning requirements. Residential uses in the

1 C2 zone must comply with the sideyard requirements of the R4 zone. (AR367.) The R4 zone requires a  
2 sideyard of 5 feet plus 1 foot additional for each story above the second story, which leads to a 10 foot  
3 sideyard for a seven story building. (AR366.) Instead of 10-foot sideyards, the Project will have five-  
4 foot sideyards as allowed in the RAS3 zone (*ibid.*), another incentive that would have required a zone  
5 change. (AR0812.) The Project will provide roughly 22 percent less open space than required by the  
6 Municipal Code. (AR812.)<sup>4</sup>

7 The Project’s approval rests entirely upon the incentives provided by the Planning Department’s  
8 improper expansion of incentives via its TOC Guidelines, not the voters in Measure JJJ. Without these  
9 improperly applied incentives, in order to construct at the requested density and height, the Project  
10 would have required a zone or height district change under Los Angeles Municipal Code section 12.32.  
11 Such a request would have triggered the requirements of Section 5 of Measure JJJ. (See AR0008 [“To  
12 be eligible for a discretionary General Plan amendment pursuant to Subdivision B of Section 11.5.6 of  
13 the Los Angeles Municipal Code or otherwise, or any zone change or height-district change that results  
14 in increased allowable residential floor area, density, or height . . . Projects with ten or more residential  
15 dwelling units shall meet one of the [affordable housing provisions] and shall comply with the job  
16 standards in subdivision (i).”].) The awarding of discretionary incentives not encompassed in Section 6  
17 of Measure JJJ means that the Project did not have to obtain the kind of discretionary entitlements like  
18 zone changes or height-district changes that would fall within Section 5 and necessitate compliance with  
19 the labor standards. By seeking entitlements under the TOC Guidelines that unlawfully expand the  
20 scope of Measure JJJ Section 6, the Project avoided providing the “good jobs” promised by Measure JJJ.

21 **II. THE PROJECT’S APPROVAL IS INCONSISTENT WITH THE ALQUIST-**  
22 **PRIOLO ACT’S REQUIREMENTS OF SETBACKS FROM FAULT TRACES IN**  
23 **MAPPED EARTHQUAKE FAULT ZONES SURROUNDING ACTIVE FAULTS**

24 The Project is located in a state-mapped Alquist-Priolo Earthquake Fault Zone, and its approval  
25 does not comply with the requirements of the Alquist-Priolo Act. The Alquist-Priolo Act is a state law  
26 that is intended to avoid the significant risk to life and loss of property from surface fault ruptures by  
27 requiring geologic studies for properties in mapped Alquist-Priolo Earthquake Fault Zones and ordering

28 <sup>4</sup> To be clear, the sideyard setback required by the Los Angeles Municipal Code is distinct from  
the 50-foot setback from a fault or fault trace required by the Alquist-Priolo Act.

1 local jurisdiction to prohibit the location of developments across the trace of active faults. RPIs'  
2 consultant acknowledged that the Santa Monica fault is considered an active fault. (AR1316.) "It is  
3 now well known in the earth sciences community that starting from Century City through the Veteran's  
4 Administration grounds just west of interstate 405, the Santa Monica fault extends roughly along the  
5 alignment of Santa Monica Boulevard." (AR1320.)

6 Public Resources Code section 2621.5 provides that the purpose of the Act is "to provide policies  
7 and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit  
8 the location of development and structures for human occupancy across the trace of active faults." The  
9 State Mining and Geology Board has promulgated regulations to implement the Alquist-Priolo Act,  
10 whose purpose is to set forth policies "governing the exercise of city . . . responsibilities to prohibit the  
11 location of developments and structures for human occupancy across the trace of active faults." (Cal.  
12 Code Regs., tit. 14, § 3600.) While local jurisdictions can impose more stringent standards, they are not  
13 permitted to impose weaker earthquake safety regulations. (Pub. Resources Code, § 2624 [cities may  
14 "establish policies and criteria which are stricter than those established by this chapter"].) The law  
15 requires the State Mining and Geology Board to create zones of investigation around active surface  
16 faults, reflecting the uncertainty in precisely identifying the location of such faults and the probability of  
17 branches of active faults in the proximity of mapped faults. (Pub. Resources Code, § 2622.) A fault  
18 zone map was issued by the State Mining and Geology Board showing a fault zone that includes the  
19 entirety of the Project site. (AR0783.)

20 Alquist-Priolo applies to "any project . . . which is located within a delineated earthquake fault  
21 zone, upon issuance of the official earthquake fault zones maps to affected local jurisdictions." (Pub.  
22 Resources Code, § 2621.5.) "Earthquake fault zones" are "area delineated by the State Geologist . . .  
23 which encompass the traces of active faults." (Cal. Code Regs., tit. 14, § 3601(e).) An "active fault" is  
24 a fault that has had surface displacement within Holocene time (about the last 11,000 years), hence  
25 constituting a potential hazard to structures that might be located across it." (*Id.*, subd. (a).) A "fault  
26 trace" is "that line formed by the intersection of a fault and the earth's surface, and is the representation  
27 of a fault as depicted on a map, including maps of earthquake fault zones." (*Id.*, subd. (b).)

28 "Project" includes "structures for human occupancy," (Pub. Resources Code, § 2621.6, subd.

1 (2)), which State Mining and Geology Board regulations define as “any structure used or intended for  
2 supporting or sheltering any use or occupancy, which is expected to have a human occupancy rate of  
3 more than 2,000 person-hours per year,” (Cal. Code. Reg., tit. 14, § 3601, subd. (e)). There can be no  
4 dispute that this residential project at this location is subject to Alquist-Priolo prohibitions.

5 The Alquist-Priolo Act clearly requires a city to have fully assessed the risk of surface fault  
6 rupture *before* it approves projects located in mapped earthquake fault zones. “The approval of a project  
7 by a city . . . shall be in accordance with policies and criteria established by the State Mining and  
8 Geology Board and the findings of the State Geologist. . . . Cities . . . shall require, prior to the approval  
9 of a project, a geologic report defining and delineating any hazard of surface fault rupture.” (Pub.  
10 Resources Code, § 2623; see also Cal. Code Regs, tit. 14, § 3603(d) [“Application for a development  
11 permit for any project within a delineated earthquake fault zone shall be accompanied by a geologic  
12 report. . . which is directed to the problem of potential surface fault displacement through the project  
13 site. . . .”].) RPIs submitted such a report to the City, and although that report indicated that a future  
14 “geotechnical engineering report” would be submitted to the City at a later date, it appears that the  
15 Applied Earth Sciences Geologic Fault Study Report is intended to satisfy the requirement of a geologic  
16 report defining and delineating surface fault rupture hazards. (AR1318.)<sup>5</sup>

17 State regulations implementing the Alquist-Priolo Act dictate how local governments must  
18 comply with the state law. The State Mining and Geology Board regulations prohibit construction in  
19 areas where faults are located: “No structure for human occupancy . . . shall be permitted to be placed  
20 across the trace of an active fault.” (Cal. Code Reg., tit. 14, § 3603, subd. (a).) The prohibition is not  
21 restricted solely to the area directly atop fault traces. As a precautionary principle, the regulations  
22 provide that “*as the area within fifty (50) feet of such active faults shall be presumed to be underlain by*  
23 *active branches of that fault unless proven otherwise* by an appropriate geologic investigation and report  
24 . . . no such structures shall be permitted in this area.” (Cal. Code Reg., tit. 14, § 3603, subd. (a)  
25 (emphasis added).) The regulation requires the *presumption* that fault traces are present in the area 50  
26 feet from a fault. Because it is unknown whether the fault or its traces are immediately off site, even if

27  
28 <sup>5</sup> The study conducted in RPIs’ report was insufficient because it utilized only a single transect  
and did not study the eastern or southern boundaries.

1 there is not a fault on the site, the risk of off-fault deformation requires a setback. The applicants' study  
2 admitted as much. For that reason, the investigation provided that "we must recognize the possibility of  
3 the existence of the fault or fault splay within less than 50 feet of either property boundary, or just  
4 beyond the explored areas." (AR1325-1326.) As set forth in the state regulations, by definition, once the  
5 state has delineated an earthquake fault zone, that zone is deemed to "encompass the traces of active  
6 faults." (Cal. Code Regs., tit. 14, § 3601(d).) There is a presumption that a surface fault trace exists  
7 when an area has not been investigated, so construction is not permitted within 50 feet of the site  
8 boundary in the direction of the fault zone.

9 The City's own policies for fault investigations are consistent with the state regulation. The Los  
10 Angeles Department of Building and Safety Information Bulletin "Implementation of the Alquist-Priolo  
11 Earthquake Fault Zoning Act" provides that all applications for structures for human occupancy in  
12 Earthquake Fault zones must include a geologic-seismic report. (AR0789.) "No structure for human  
13 occupancy shall be permitted to be placed on or across an inferred fault trace. Furthermore, the area  
14 within 50 feet of the inferred fault trace shall be assumed to be underlain by active branches of that fault  
15 unless and until proven otherwise by a geologic-seismic report." (*Ibid.*) In its policies regarding  
16 investigations, the City requires that "[w]here exploration does not extend 50 feet beyond a property line  
17 within a fault investigation zone, an active trace at the property line must be considered present and  
18 require a setback." (AR0787 [quoting Los Angeles Department of Building and Safety "Surface Fault  
19 Rupture Hazard Investigations" information bulletin P/BC 2017-129, which is attached in full at RJN,  
20 Exh. 3].) The placement of active faults on the state maps "are mainly to justify the location of study  
21 zone boundaries and the fault traces shown are not adequately located to substitute for the requirements  
22 of the 'Fault Zoning Act'." (AR0790.)

23 The Project's geologic study admittedly did not look for evidence of fault traces within 50 feet of  
24 the property line. Nor does the record contain evidence supporting a conclusion that the fault is not  
25 located within 50 feet of the site. The geologic study says that the "Navigate LA maps show the main  
26 fault location in the vicinity of the site to extend parallel to Santa Monica Boulevard, along the alley  
27 north of the Boulevard." (AR1321.) However, the Metro study maps show evidence of fault traces in  
28 several locations both north and south of Santa Monica Boulevard. (AR0784.) Seismic activity in the

1 area provided by FTC indicates activity to the south as well. (AR0786.) And as the City’s policy  
2 provides, the general placement of fault lines on state maps is not intended to substitute for the  
3 requirements of a geologic fault study. (AR0790.) The geologic study admits that under state and city  
4 policies, the existence of the fault within less than 50 feet of either property boundary must be  
5 presumed. (AR1325-1326.) Yet instead of acknowledging the requirement of a setback, the study  
6 recommends a “this slab ‘mat’ foundation . . . as a form of engineered mitigation against fault rupture  
7 within close proximity to the proposed building.” (AR1326.) No additional detail is provided regarding  
8 the parameters of the foundation nor are areas of the site demarcated for use of the foundation on the site  
9 plan. (See RJN, Exh. 3, p. 21.) Nor is the reinforced foundation even required as a condition of  
10 approval.

11 Finally, the reliance upon a “reinforced foundation” is not supported by the statute, its  
12 regulations, or the City’s policies. The Alquist-Priolo Act and its regulations do not exempt structures  
13 with a reinforced foundation. The City ignored state law by approving the Project’s construction within  
14 50 feet of an area presumed to be underlain by surface faults. A writ of mandate should issue to enforce  
15 this protective policy.

16 **CONCLUSION**

17 The Project relies upon incentives that alter City ordinances and that were not approved by the  
18 voters acting as legislators as required. In addition, the approval was in violation of the Alquist-Priolo  
19 Act, because without evidence of the absence of fault trace within 50 feet of the property line, the City  
20 approved construction of a project for human occupancy without a setback from the property line. In the  
21 absence of off-site investigation, there is no basis to ignore state law or City policy requiring a 50-foot  
22 setback from the property line. It was error to approve the Project without such a requirement or  
23 condition. A writ of mandate should issue to void the Project approvals in their entirety.

24 DATED: April 1, 2021

Respectfully Submitted,  
STRUMWASSER & WOOCHELL LLP  
Fredric D. Woocher  
Beverly Grossman Palmer

27 By   
Beverly Grossman Palmer

28 *Attorneys for Petitioner Fix the City, Inc.*

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

4 Re: *Fix The City v. City of Los Angeles et al.*  
5 L.A.S.C. Case No. 19STCP03740  
6 Related Case No. 20STCP03529  
7 Related Case No. 20STCP01569

8 I am employed in the County of Los Angeles, State of California. I am over the age of  
9 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard,  
10 Suite 2000, Los Angeles, California 90024. My electronic mail address is  
11 loliver@strumwooch.com.

12 On **April 1, 2021**, I served the foregoing document(s) described as **PETITIONER’S**  
13 **OPENING BRIEF ON PROJECT SPECIFIC ISSUES** on all appropriate parties in this  
14 action, as listed below, by the method stated:

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16 Terry K. Macias  
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19 *Attorneys for Respondents City of Los*  
20 *Angeles, Vincent P. Bertoni, in his*  
21 *capacity as Director of City Planning for*  
22 *the City of Los Angeles, and Los Angeles*  
23 *City Planning Commission*

24 *Attorneys for Real Parties in Interest*  
25 *Elliot Nayssan, Robhana, Inc., NHD Terrace,*  
26 *LLC*

27  If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s)  
28 with the Clerk of the Court by causing the documents to be sent to One Legal, the Court's Electronic  
Filing Services Provider for electronic filing and service. Electronic service will be effected by One  
Legal's case-filing system at the electronic mail addresses indicated on the attached Service List.

29 I declare under penalty of perjury under the laws of the State of California that the  
30 above is true and correct and that this is executed on **April 1, 2021**, at Los Angeles,  
31 California.

32   
33 \_\_\_\_\_  
34 LaKeitha Oliver