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Council President Eric Garcetti and the Los Angeles City Council
City Hall
200 North Spring Street
Room 470
Los Angeles, CA 90012

Re: *Ground Lease Consent and CEQA Appeal Regarding the Autry National Center's Interior Improvement Project*

Dear Council President Garcetti and City Councilmembers:

On behalf of the Autry National Center, I am submitting this letter with respect to the Autry's proposed remodeling of portions of its Museum at Griffith Park, which will be funded by a \$6.6 million grant from the California State Parks' Nature Education Facilities. The State grant will enable to Autry to redesign its internal exhibition space to display two new exhibits for its visitors that focus on the relationship between Native Americans tribes of California to their natural environment, as well as the lives of two significant women of the Pomo Indians. Importantly, as confirmed by the letters from the State Parks' Office of Grants and Local Services dated April 12 and June 7, 2011 (attached to the Autry's separate letter to the City dated June 15, 2011), the Autry must resolve all outstanding land issues, including consent under the Ground Lease with the City, by July 12, 2011 or risk that the State will rescind the grant award.

At the outset, we would like to clearly state that we believe that there are only two legal issues before the City Council. Those legal issues are: (1) whether the City must provide consent to the Autry's interior improvement work at its Museum in Griffith Park under the ground lease, and (2) whether the Parks Commission properly relied on a CEQA exemption in providing that consent. The Parks Commission properly consented to the proposed work under the ground lease and adopted a CEQA exemption for that consent. For the reasons discussed below, we believe the City Council should affirm those actions. However, if the City Council reverses the Parks Commission's decision on either one of these two issues, the State grant will be at risk of being rescinded given the July 12, 2011 deadline to resolve all land issues. Specifically, as to CEQA, if the Council finds that the CEQA exemption does not apply and an environmental review document should be prepared, then such a CEQA document must be prepared and certified by the

Parks Commission *before* the City can provide consent under the Ground Lease. Accordingly, such a decision by the Council would cause the Autry to miss the July 12, 2011 deadline.

The Proposed Remodeling of the Autry National Center at Griffith Park: As detailed in the May 20, 2011 General Manager Report for the Board of Recreation and Park Commissioners (Parks Commission), the proposed remodeling of the Autry includes a redesign of the internal space at the Autry to renovate and reconstruct two exhibit galleries. New, long-term exhibits entitled “First Californians” and “Dreamers, Doctors, Basketweavers” will be housed within the renovated galleries. Additionally, the proposed remodeling includes a conversion of the existing “Trails West” exhibit into a teaching garden that will display native flora and ecosystems depicted in the planned First Californians exhibit. A section of the garden will also display certain medicinal plants of the “Dreamers, Doctors, Basketweavers” exhibit. The remodeling also includes associated renovations to the existing restrooms and to the entry to the teaching garden area. Importantly from an environmental perspective, all of the proposed remodeling occurs within the footprint of the existing Autry Museum and none of the proposed remodeling will alter the external appearance of that building. The teaching garden, though an open air area like the “Trails West” exhibit, will remain enclosed. (Photographs of the existing “Trails West” exhibit are provided on the CD submitted with this letter.)

The City’s Consent Grant Pursuant to the Operating Ground Lease Is Not a Discretionary Action Subject to CEQA: On May 31, 2011, Mr. Daniel Wright appealed from the determination of the Park Commission that the Autry’s proposed remodeling is exempt from the provisions of the California Environmental Quality Act (CEQA). However, the Autry’s proposed redesign is exempt from the provisions of CEQA on a number of independent grounds.

When examining whether a project must comply with CEQA and to what extent, the preliminary step is to determine whether the project is subject to CEQA at all. (Guidelines § 15002(k).) CEQA does not apply to every decision by a public agency—only to “*discretionary* projects proposed to be carried out or approved by public agencies.” (Cal. Pub. Resources Code, § 21080(a) (emphasis added).) Examples of discretionary actions included the enactment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps. (*Id.*) Notably, CEQA does not apply to ministerial actions. (Cal. Pub. Resources Code, § 20180(b)(1).)

Based on those statutory limitations, the CEQA Guidelines provide that “CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project.” (CEQA Guidelines § 15002(i).) A discretionary project is one “which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” (CEQA Guidelines § 15357.) “Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called ‘ministerial,’ and CEQA does not apply.” (CEQA Guidelines § 15002(i)(1); see also *Health First v. March Joint Powers Auth.* (2009) 174 Cal.App.4th 1135, 1142-45 (exempting from CEQA design plan approval where public agency’s authority was limited to deciding whether the design plan was consistent with existing land use plans and design guidelines); *Madrigal v. City of Huntington Beach* (2007) 147 Cal.App.4th 1375, 1383-85 (exempting from CEQA a grading permit where the city’s authority to issue or deny the permit was limited to determining whether the grading permit conformed to an existing conditional use permit).)

As discussed in the staff report, the Autry Museum at Griffith Park is owned and operated privately subject to a ground lease with the City of Los Angeles (through its Park Commission) executed in 1987 (the “Ground Lease”).¹ The Ground Lease provides in Section XX.B(ii) that, after the original construction of the Autry, proposed permanent internal modifications exceeding \$25,000 in cost must receive prior written consent of the Board. The Autry’s remodeling will exceed that dollar figure. Notably, the Ground Lease provides that the Board’s consent regarding proposed modifications to the Autry “shall not be unreasonably withheld or delayed.” (Emphasis added.) As discussed below, that provision removes the City’s consent under the Ground Lease from the “discretionary” category of approvals and therefore exempts that consent from CEQA.

California case law indicates that consent rights like those in the Ground Lease are governed by fundamental contractual concepts of good faith and fair dealing. (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488; *Universal Sales Corp. v. Cal. Etc. Mfg. Co.* (1942) 20 Cal.2d 751; *McWilliams v. Holton* (1967) 248 Cal.App.2d 447, 451.) Those requirements, in turn, prohibit the withholding of consent by a landlord unless the landlord has a good faith, commercially reasonable objection for doing so. (*Kendall, supra*, 40 Cal.3d at pp. 497-98; *Cohen v. Ratinoff* (1983) 147 Cal.App.3d 321, 330.) “Examples of bases for such a good faith reasonable objection would be inability to fulfill terms of the lease, financial irresponsibility or instability, suitability of premises for

¹ The Ground Lease and other background materials for the Autry National Center, including the CEQA environmental review document prepared for the Autry Museum when the City originally entered into the Ground Lease, are included on a CD attached to this letter.

intended use, or intended unlawful or undesirable use of premises.” (*Kendall, supra*, 40 Cal.3d at p. 497 (quoting *Cohen, supra*, 147 Cal.App.3d at p. 330.)

Notably, the unreasonable withholding of consent may constitute a breach of the covenant of good faith and fair dealing and, in turn, the lease. (*Cohen, supra*, 147 Cal.App.3d at p. 330.) In that regard, *Kendall, supra*, 40 Cal.3d at p. 497 (quoting *Schweiso v. Williams* (1984) 150 Cal.App.3d 883), held that “denying consent solely on the basis of personal taste, convenience or sensibility, or in order that the landlord may charge a higher rent than originally contracted for, have been held arbitrary reasons for failing the tests of good faith and reasonableness under commercial leases.” Thus, the *Kendall* court made it clear that landlords cannot use their consent rights as leverage to extract concessions from the party requesting the consent.

There can be no legally proper objection to the Autry’s interior improvement work under the Ground Lease. The Autry will continue to abide by the provisions of the Ground Lease and fulfill all of its financial and other obligations. Moreover, the nature of the Autry’s operation of a museum under the Ground Lease requires regular renovations and other changes necessary to keep the museum’s exhibits attractive to its visitors (as contemplated by the Ground Lease’s express provision allowing for future modification of the Autry). Further, the proposed remodeling of the Autry is consistent with the use of the premises already authorized under the Ground Lease and will enhance the ability of the Autry to continue to operate a museum in Griffith Park for the benefit of the residents of and visitors to Los Angeles.

Thus, pursuant to the Ground Lease, the Autry has the right to remodel its interiors subject only to the City’s commercially reasonable objections, of which there are none here. Accordingly, because the City must give its consent under the Ground Lease given the facts of this matter, the grant of consent is not a discretionary action subject to the provisions of CEQA.

The Proposed Remodeling of the Autry Is Exempt from CEQA Based on Other Exemptions: The proposed remodeling of the Autry is also exempt from the provisions of CEQA pursuant to enumerated exemptions listed in CEQA itself as well as the City’s own CEQA Guidelines. First, CEQA Guidelines section 15301 exempts from the provisions of CEQA the “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use.” Pursuant to CEQA Guidelines Section 15301(a), interior alterations to existing facilities are an enumerated exemption from CEQA.

Consistent with CEQA, Article II, Section 1 of the City's CEQA Guidelines provides a list of classes of projects which "do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA." Class 1 exempts "the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing." Class 13 in the City's CEQA Guidelines exempts:

[i]nterior or internal modifications to established and discrete areas which are fully developed within the larger environment of parks or recreation centers, where such interior or internal modification is essentially a rearrangement (rather than an additive function) such as might occur at a zoo, outdoor museum, arboretum, formal garden, or similar display area.

Both the Class 1 and the Class 13 exemptions are applicable here and exempt the proposed Autry remodeling from CEQA.

Importantly, the proposed remodeling of the Autry will occur entirely within the existing footprint of the existing museum.² The redesign includes the renovation and reconstruction of two museum galleries and the associated galleries. Other related improvements include renovated restrooms and an altering of the entry to the existing open air "Trails West" exhibit, which will itself become a teaching garden showcasing California's bio-regions and flora referenced in the museum's "First Californians" exhibit. The teaching garden, like the existing Trails West exhibit, will be an open air area completely enclosed by a 13 to 21 foot high fence. The teaching garden will not be visible to those outside of the Autry. For these reasons, the proposed remodeling is exempt from CEQA. (See *Martin v. City and County of San Francisco* (2005) 135 Cal. App. 4th 392 (finding exempt from CEQA the interior alteration of a home in a neighborhood listed on the National Register of Historic Places and the California Register of Historical Resources.)

The Proposed Remodeling Pursuant to the State Grant Constitutes the Entirety of the Action Contemplated at This Time: Mr. Wright spends a considerable amount of time in his appeal letter detailing the purported historical record of the Autry's proposed expansion plans. Mr. Wright contends that the City has not fully considered in

² Mr. Wright's claim that the interior remodeling work will intensify the uses in the Museum is legally irrelevant. The above exemptions apply regardless of any slight intensification of use, and fuller use of the Museum space for more exhibitions is consistent with the analysis in the original CEQA review document prepared by the City when it entered into the Ground Lease.

its CEQA analysis the “whole of the action” proposed by the Autry because the description of the Autry’s proposed remodeling does not account for additional work that may occur in the future. Mr. Wright’s contentions are not supported by the evidence or the law.

With regard to Mr. Wright’s contentions that the City has failed to consider the “whole of the action,” CEQA generally requires a public agency to consider the entirety of a proposed project in order to ensure that its environmental impacts are not “piecemealed” into smaller parts and minimized. (CEQA Guidelines § 15378.) CEQA requires an analysis of future phases of a project only if there is credible and substantial evidence that such an expansion is “reasonably foreseeable.” (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1449, 1451.) A public agency “is not required to include speculation about future environmental consequences” of development that is “unspecified and uncertain.” (*Id.* at p. 1449)

Mr. Wright’s appeal cannot meet this legal test. Without detailing all of Mr. Wright’s inaccuracies regarding the Autry’s past proposals, Mr. Wright’s statements regarding the scope of the project currently before the City are plainly false. First and foremost, the 2009 proposal regarding an expansion of the Autry Museum at Griffith Park has been completely abandoned, and the Autry has stated that publicly. Additionally, while Mr. Wright selectively quotes portions of documents from the Spring of 2010 in support of his statements that the Autry is currently contemplating several phases of a multi-year remodeling project, there are simply no future plans to expand the Autry Museum Building. The proposed remodeling of the Autry Museum at Griffith Park (construction of which is in fact anticipated to extend beyond 2011) is limited to the internal renovation of galleries, the installation of exhibits within those galleries, the conversion of the “Trails West” exhibit into the teaching garden, and the renovation of existing restrooms. There are no specific “phases” for any future expansion of the Museum building. Because of the nature of the museum, it is possible that in the future there will be further exhibit renovations and updates to ensure that the Museum continues to provide an attractive experience for its visitors, and the Museum remains committed to its vision as a dynamic destination and a nationally-recognized center for the study of the American West. However, any such work would be limited to the *interior* of the Autry Museum, and there are no plans to expand the Museum building at this time.

Thus, the proposed interior remodeling work is the only set of improvements at the Autry Museum in Griffith Park currently contemplated or reasonably foreseeable. In CEQA terminology, the proposed remodeling pursuant to the grant is the entirety of the action. Therefore, Mr. Wright’s CEQA appeal based on his speculation as to future phases of work must be denied.

Conclusion

As stated at the outset of this letter, the issue of providing consent under the ground lease to the Autry's proposed interior improvement work and the applicability of certain exemptions under CEQA are the only issues before the Council. The evidence supports only one action on those issues – affirming the Parks Commission's decision. Tying that consent to any other issue (such as the resolution of the re-use of the Southwest Buildings) directly jeopardizes the State grant. If such consent is not secured by the State's July 12, 2011 deadline, the State has sole discretion to rescind the grant award. Therefore, we urge the City Council to confirm the actions of the Parks Commission to allow the grant project to proceed.

Very truly yours,



Edward J. Casey

EJC/ysr
Enclosure

cc: Timothy McWilliams, Office of the City Attorney