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April 13, 2026

SENT VIA EMAIL

Planning and Land Use Management (PLUM) Committee
Los Angeles City Council
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RE: Supplemental Objections to April 14, 2026, Plum Hearing; Appellant Appearance Under Protest; Barry Building Project; Historic-Cultural Monument #887; Council File No. 25-1518; Case Nos. ENV-2019-6645-EIR-1A; CHC-2007-1585-HCM

Dear Honorable Members of the PLUM Committee:

This firm represents Angelenos for Historic Preservation (“AHP” or “Appellant”) regarding the pending CEQA appeal for the proposed demolition of the Barry Building at 11973-11975 W. San Vicente Boulevard (“Project”). We are in receipt of the City’s supplemental staff report, which purports to update the Mitigation, Monitoring, and Reporting Program (MMRP) and EIR findings. AHP submits this letter to raise critical procedural and substantive defects regarding the City’s latest actions, specifically concerning the City’s loss of jurisdiction, its failure to comply with Assembly Bill 52 (AB 52), the legal inadequacy of its modified MMRP, and its failure to recirculate the EIR.

I. APPEARANCE STRICTLY UNDER PROTEST: THE CITY HAS LOST JURISDICTION

AHP continues to participate in this April 14, 2026, hearing strictly under protest. As detailed in our March 31, 2026 Notice of Jurisdictional Loss, the City Council’s jurisdiction to act on this CEQA appeal irrevocably expired on March 6, 2026.

The City had a mandatory 75-day final date to act on the appeal (Los Angeles Municipal Code § 13B.11.1.F.7.a). The City failed to obtain timely, mutual written consent for an extension prior to this deadline, and the Council President’s attempt to execute a consent 20 days after the deadline had passed cannot retroactively resuscitate a lapsed timeline. Consequently, the administrative process has unlawfully concluded, and the appeal was deemed denied by operation of law on March 6, 2026. Jurisdiction cannot be retroactively manufactured, and AHP’s participation today does not waive our right to seek judicial relief regarding this fatal jurisdictional defect.

II. THE CITY FAILED TO COMPLY WITH AB 52 AND IMPROPERLY DISMISSED SIGNIFICANT IMPACTS TO TRIBAL CULTURAL RESOURCES

The City incorrectly asserts that the Project will have no significant impacts on Tribal Cultural Resources (TCR) and that it fully complied with its AB 52 consultation obligations (Department of City Planning Staff Report, February 19, 2026, p. 2). The administrative record and the February 24, 2026, letter from the Gabrieleño Band of Mission Indians – Kizh Nation demonstrate otherwise.

A. The Tribe Provided Substantial Evidence of Tribal Cultural Resources

CEQA places the burden on the Tribe to show, through substantial evidence, that a project may have a significant impact on a TCR. Under CEQA, “substantial evidence” includes expert opinion supported by fact, and the Legislature deems Native American tribes to be the experts regarding their own cultural resources, history, and places.

During the October 7, 2020, consultation and in subsequent submissions, the Kizh Nation provided the City with extensive documentation illustrating the geography, trade routes, ceremonial sites, and the Village of Kuruvungna overlapping the Project Site (Kizh Nation Letter, February 24, 2026, pp. 2-3). The City improperly dismissed this substantial evidence, claiming there was no physical “scientific” evidence to support the Tribe’s claims. However, as the Tribe’s General Counsel pointed out to the City, “By concluding that the Tribe’s extensive documentation and oral history do not constitute substantial evidence, the City is effectively substituting its own judgment for the expertise that the Legislature specifically vested in the Tribe” (Kizh Nation Letter, February 24, 2026, p. 3).

Furthermore, as the Court of Appeal recently affirmed, the express legislative intent of AB 52 was to “[e]stablish a new category of resources in [CEQA] called ‘tribal cultural resources’ that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation” (*Koi Nation cf Northern California v. City cf Clearlake* (2025) 109 Cal. App. 5th 815, 822). The Court explicitly warned that an archaeological study does not “obviate the need for the City to consider the significance of resources to [the Tribe] in identifying tribal cultural resources,” because “the tribal consultation requirement is intended to facilitate precisely such consideration” (*Id.* at 840, 841). By prioritizing archaeological findings over the Tribe’s ancestral knowledge, the City violated CEQA.

B. The City Unlawfully Terminated Consultation Without Mutual Agreement

AB 52 requires a meaningful, good-faith effort to reach a mutual agreement on appropriate mitigation measures. Here, the Tribe proposed specific, culturally appropriate mitigation measures, including retaining a Native American monitor during ground-disturbing activities. Instead of meaningfully discussing these proposals, the City summarily rejected them without explaining why they were infeasible, issued a Pre-Closure letter on July 6, 2022, and unilaterally terminated consultation on July 21, 2022.

The *Koi Nation* court stressed that “[m]eaningful” discussion is the hallmark of CEQA’s tribal consultation requirement,” defining it as “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement” (*Koi Nation*, 109 Cal. App. 5th at 840). Terminating consultation without careful consideration and an effort to seek agreement is a fatal error, as “[t]he failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial” (*Id.* at 836). Therefore, the City’s failure to comply with the consultation requirement “constitutes a prejudicial abuse of discretion, and therefore the City’s approval of the MND and the project cannot stand” (*Id.* at 842).

III. THE MODIFIED MMRP IS LEGALLY INADEQUATE AND IMPROPERLY COMPRESSES MITIGATION

To avoid formally adopting the Tribe’s proposed mitigation measures, the City’s EIR and modified MMRP rely entirely on a “standard Condition of Approval for the inadvertent discovery of tribal cultural resources” to conclude that impacts to TCRs will be less than significant. The City claims that because the Project is subject to this standard regulatory condition, no actual mitigation measures are recommended or required.

This approach violates the core holding that a lead agency cannot compress mitigation measures into the project description (or as project design features/standard conditions of approval) to avoid making a formal significance finding and adopting formal CEQA mitigation (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645).

A. Unlawful Compression of Mitigation into Project Design

By labeling the inadvertent discovery protocol as a mere “Condition of Approval” rather than a formal mitigation measure, the City has improperly short-circuited CEQA’s analytical sequence. CEQA requires a lead agency to first clearly identify the significance of the environmental impact against the baseline, and *then* evaluate the effectiveness of proposed mitigation measures to reduce that impact. By baking the inadvertent discovery condition into the Project’s baseline approvals, the City artificially suppresses the significance of the initial impact to native soils and avoids its duty to analyze whether the condition actually mitigates the harm.

B. Prejudice to the Tribe, the Public, and AHP

The City's reliance on a standard inadvertent discovery condition instead of the Tribe's proposed mitigation measures is not a mere procedural defect; it results in severe, substantive prejudice. A comparison of the two protocols reveals that the City's condition fails to protect the Tribe's rights and places irreplaceable resources at significant risk of irreversible loss:

- **Proactive vs. Reactive Protection:** The Tribe proposed proactive mitigation, including the retention of a qualified Native American monitor present during all ground-disturbing activities with the authority to halt work prior to destruction. The City's standard condition, however, requires no monitor. Instead, it relies on untrained construction crews to "inadvertently" spot resources while operating heavy machinery. Because TCRs often lack traditional archaeological signatures, an untrained worker is unlikely to recognize a resource until after it has been struck. As the Tribe noted, "The destruction of tribal cultural resources is, by its very nature, irreparable." A reactive protocol guarantees that mitigation only occurs *after* irreversible harm has been inflicted.
- **Subordination of Tribal Expertise:** Even if a resource is inadvertently discovered, the City's standard condition unlawfully subjugates tribal expertise. Under the City's protocol, if the Tribe makes recommendations for the treatment and disposition of a discovered TCR, the applicant is only required to implement them "if a qualified archaeologist reasonably concludes that the tribe's recommendations are reasonable and feasible." This approach violates AB 52. The Legislature enacted AB 52 specifically to separate Tribal Cultural Resources from archaeological resources, expressly recognizing that Tribes, not archaeologists, are the sole experts regarding their own history, practices, and sacred sites. By granting a qualified archaeologist veto power over the Tribe's sacred treatment protocols, the City has functionally substituted its own judgment for the expertise that the Legislature specifically vested in the Tribe.
- **Prejudice to the Public and Appellant:** When mitigation is improperly hidden as a project design feature or standard condition, it is shielded from the rigorous public scrutiny and feasibility analysis required by CEQA. The public is deprived of its right to evaluate whether the measure is enforceable, whether it is sufficient to reduce the impact to a less-than-significant level, and whether superior alternatives (such as preservation of the site to avoid excavation entirely) should have been adopted instead.

C. The Unilateral Imposition of PDFs Falsely Presumes Tribal Consent

The City's supplemental staff report attempts to cure these defects by inserting "PDF-TCR-1 through 5" into the MMRP, claiming these features outline ground-disturbance monitoring activities by the Gabrieleño Band of Mission Indians – Kizh Nation. However, this

eleventh-hour maneuver severely lacks the most critical element of AB 52: the Tribe's actual agreement.

AB 52 consultation requires a good-faith effort "seeking agreement" (*Koi Nation*, 109 Cal. App. 5th at 840). The City cannot unilaterally draft Project Design Features that dictate the Tribe's monitoring activities without the Tribe's consent. In fact, the record proves the Tribe explicitly rejects the City's imposed framework. As stated in their February 24, 2026 letter, the City "rejected the Tribe's proposed mitigation measures... without any substantive explanation of why those measures were infeasible" and this "failure to adopt or meaningfully respond to these measures violates its obligations under AB 52" (Kizh Nation Letter, February 24, 2026, p. 5). By inserting these PDFs into the MMRP without mutual agreement, the City is attempting to create the appearance of tribal consent where none exists.

IV. LAMC SECTION 13B.11.1.F.8 VIOLATES PROCEDURAL DUE PROCESS AND THE RIGHT TO A FAIR HEARING UNDER CCP § 1094.5

As an additional matter of protest, AHP formally objects to the application of Los Angeles Municipal Code Section 13B.11.1.F.8 to this proceeding, as it constitutes a fundamental violation of procedural due process and deprives the Appellant of a fair hearing under California Code of Civil Procedure § 1094.5.

A cornerstone principle of due process is the right to an opportunity to be heard (*Matthews v. Eldridge* (1976) 424 U.S. 319, 333 ["The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"]; *Grannis v. Ordean* (1914) 234 U.S. 385, 394 ["The fundamental requisite of due process of law is the opportunity to be heard."]). The California Supreme Court has long observed that the requirement for a fair hearing under Section 1094.5 is grounded in this same constitutional due process (*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 215). Quasi-judicial proceedings, where an administrative agency exercises discretion to apply laws, regulations, and policies to a specific set of facts to make binding determinations that affect legal rights, require due process of law under both the U.S. and California Constitutions (*Londoner v. Denver* (1908) 210 U.S. 373, 385-386).

In the realm of land use and environmental decision-making, the California Supreme Court has specifically held that the approval of a development project is an adjudicatory function which, under principles of due process, requires that both appropriate notice and a meaningful opportunity to be heard be given to persons whose property interests or surrounding environmental impacts may be significantly affected (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 610, 612-615). This constitutional guarantee of procedural due process extends not only to landowners, but also to residents and affected tenants of surrounding properties who could be impacted by the project (*Pillsbury v. South Coast Regional Community* (1977) 71 Cal.App.3d 740, 750-755).

Furthermore, the California Supreme Court has recognized that California's due process clause protects a unique "dignitary interest" that requires adjudicative hearings to be conducted

so that persons with constitutional interests at stake are treated with dignity (*People v. Ramirez* (1979) 25 Cal.3d 260, 268-269). This dignitary interest demands that individuals be informed of the nature, grounds, and consequences of an action, and enables them “to present their side of the story before a responsible governmental official” (*Id.* at 269). The Supreme Court held that “freedom from arbitrary adjudicative procedures is a substantive element of one’s liberty” and that when an individual is subjected to deprivatory governmental action, they always have a “due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity” (*Id.* at 268).

The core of procedural due process is this constitutional right to a meaningful opportunity to be heard, which inherently includes the right to review and rebut the evidence and arguments presented by opposing parties. However, LAMC § 13B.11.1.F.8 creates a structurally biased, arbitrary, and asymmetrical timeline that systematically prejudices appellants in CEQA appeals and strips them of this right.

Under this ordinance, all appeal-related documents filed by the appellant must be submitted “no later than five business days prior to the date set for the hearing.” Conversely, documents filed by “any other party,” which inherently includes the Applicant and City staff, are permitted to be filed “no later than two business days prior to the date of the hearing.” The ordinance strictly mandates that any documents submitted after these deadlines “shall not be considered by the City Council in its review and decision on the appeal.”

In practice, this ordinance functions as a procedural gag order. It allows City staff and the Applicant to review the Appellant’s final submissions, draft rebuttals, and introduce entirely new information, while statutorily barring the Appellant from submitting any written response to that new material. The Department of City Planning’s latest recommendation report, which introduces new CEQA Findings and a modified Mitigation, Monitoring, and Reporting Program containing entirely new Project Design Features (PDF-TCR-1 through 5), is dated April 8, 2026. Because the Appellant’s strict five-business-day deadline to submit documents for the April 14, 2026, hearing passed before or at the exact time this staff report was even issued, the strict application of LAMC § 13B.11.1.F.8 would unlawfully preclude AHP from submitting formal, written rebuttal to these new evidentiary claims. Excluding this letter would prevent AHP from being able to present its position and ultimately deny AHP its constitutional right to be heard.

A quasi-judicial process that allows an agency and an applicant to introduce new evidence and modified CEQA mitigation frameworks just days before a final appellate hearing, while legally gagging the Appellant from responding in writing, is the antithesis of a fair hearing. To dispose of AHP’s significant interests without offering them a meaningful chance to be heard on this new evidence would treat the Appellant and its members as “a nonperson, an object, rather than a respected, participating citizen,” in direct violation of their dignitary interests (*People v. Ramirez*, 25 Cal.3d at 268).

Therefore, the City must accept and consider this supplemental letter and the information contained herein prior to the April 14, 2026, hearing. To the extent the City maintains that it need

not consider this letter and attempts to exclude it under Chapter 1A of the Code, AHP hereby brings an as-applied challenge to the constitutionality of LAMC § 13B.11.1.F.8 (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 768-69). AHP asserts that the City's enforcement of this asymmetrical deadline in this specific instance is a prejudicial abuse of discretion under CCP § 1094.5 and an unconstitutional deprivation of the due process rights established in *Matthews, Grannis, Horn, Pillsbury, and Ramirez*.

V. THE ELEVENTH-HOUR ADDITION OF FIVE NEW “PROJECT DESIGN FEATURES” CONSTITUTES SIGNIFICANT NEW INFORMATION REQUIRING EIR RECIRCULATION

The City's April 8, 2026, staff report attempts to quietly introduce five highly detailed “Project Design Features” (PDF-TCR-1 through 5) into the revised Mitigation Monitoring Program (MMP) to address impacts to Tribal Cultural Resources (TCRs). However, the City claims that these additions do not change the conclusions of the EIR and that the impacts remain less than significant. This eleventh-hour maneuver introduces significant new information into the record, mandating recirculation of the EIR.

A. The Legal Standard for Recirculation

Under CEQA, recirculation of an Environmental Impact Report (EIR) is required when “significant new information” is added to the EIR after the draft EIR has been circulated for public review but before the final EIR is certified. New information is “significant” if it changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.

As established by the California Supreme Court and subsequent case law, significant new information requiring recirculation includes disclosures showing that: (1) a new significant environmental impact would result; (2) a substantial increase in the severity of an impact would result without mitigation; (3) a feasible alternative or mitigation measure considerably different from others previously analyzed would clearly lessen significant impacts, but proponents decline to adopt it; or (4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Conversely, recirculation is not required where the new information merely clarifies, amplifies, or makes insignificant modifications to an adequate EIR. While the decision not to recirculate must be supported by substantial evidence, the burden of proof lies with the challenger to demonstrate noncompliance.

B. AHP Meets the Burden of Demonstrating Noncompliance

Appellant easily meets its burden of proving that the City's decision not to recirculate is unsupported by substantial evidence. The City's addition of PDF-TCR-1 through 5 cannot be dismissed as a “minor clarification, amplification, or insignificant modification.” These provisions mandate highly specific actions to protect TCRs during ground disturbance, including

worker awareness training, the retention of a “qualified tribal monitor from and approved by the Gabrieleno Band of Mission Indians - Kizh Nation Tribe,” and detailed protocols for the inadvertent discovery of resources or human remains.

As noted in *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, when a lead agency relies on impact-reducing measures to determine that no significant effects will occur, the agency must treat those measures as formal mitigation and adopt them in compliance with CEQA’s procedural requirements. By attempting to bypass a formal finding of significance and labeling these substantive, fundamentally new mitigation measures as “Project Design Features” at the very end of the appellate process, the City demonstrates that the Draft EIR was “fundamentally and basically inadequate” regarding TCRs, thereby precluding meaningful public review.

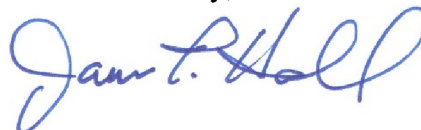
C. The New Mitigation Framework Deprives the Public and the Tribe of the Right to Comment

The core purpose of CEQA’s recirculation requirement is to encourage and ensure meaningful public participation. If CEQA is scrupulously followed, the public and affected Tribes have the right to assess whether proposed mitigation measures are actually adequate to reduce impacts to a less-than-significant level. By embedding PDF-TCR-1 through 5 into an April 8, 2026 staff report, issued well after the close of public comment and mere days before the final appeal hearing, the City has unlawfully insulated these measures from public scrutiny.

Because the City’s addition of PDF-TCR-1 through 5 constitutes significant new information that deprives stakeholders of a meaningful opportunity to comment on the adequacy of the proposed mitigation, the City is legally barred from certifying the EIR today. To comply with Public Resources Code section 21092.1, CEQA Guidelines section 15088.5, and the controlling holdings in *Laurel Heights*, *Southwest Regional Council of Carpenters*, *North Coast Rivers Alliance*, *Clover Valley Foundation*, and *East Oakland Stadium Alliance*, the City must halt this proceeding, reclassify these features as mitigation measures, and recirculate the EIR for full public and tribal review.

Thank you for your consideration of this matter. I may be contacted at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall