

AUG 12 2022

ORDER GRANTING PETITION FOR WRIT OF MANDATE

Sherri R. Carter, Executive Officer/Clerk

By Marisol Sanchez Deputy
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Through this proceeding, Petitioner, Federation of Hillside & Canyon Associations, Inc., seeks to: (1) set aside the Director of Planning Vincent P. Bertoni’s Memorandum entitled “Mulholland Scenic Parkway Specific Plan Implementation Guidance” issued on or about March 30, 2021 (the 2021 Memorandum); and (2) restore the Mulholland Design Review Board’s jurisdiction to that required by the Specific Plan text adopted by the Los Angeles City Council in May 13, 1992. Respondent, City of Los Angeles,¹ opposes the petition.

The City’s request for judicial notice (RJN) is granted.

The Petition is GRANTED.

STATEMENT OF THE CASE

Mulholland Scenic Parkway Specific Plan

On May 13, 1992, the City Council adopted the Mulholland Scenic Parkway Specific Plan (MSPSP). (AR 1-162.) The MSPSP protects “roughly 20 square-miles, and travels through five council districts, six Community Plans, one City-recognized Significant Ecological Area, and the Santa Monica Mountains National Recreation area which includes state and City-owned parks.” (AR 2, 126.)

The MSPSP contains 14 specific purposes:

- A. To assure maximum preservation and enhancement of the parkway’s outstanding and unique scenic features and resources.
- B. To preserve Mulholland Drive as a slow-speed, low-intensity drive.
- C. To preserve and enhance land having exceptional recreational and/or educational value.
- D. To assure that land uses are compatible with the parkway environment.

¹ As noted by the City, neither the Director of Planning Vincent P. Bertoni nor the Los Angeles Department of City Planning are separate from City. Thus, there is one Respondent here—the City. (See Opposition 6:26-27.)

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- E. To assure that the design and placement of buildings and other improvements preserve, complement and/or enhance views from Mulholland Drive.
- F. To preserve the existing residential character of areas along and adjoining the right-of-way.
- G. To minimize grading and assure that graded slopes have a natural appearance compatible with the characteristics of the Santa Monica Mountains.
- H. To preserve the natural topographic variation within the Inner and Outer Corridors.
- I. To reduce the visual intrusion caused by excessive lighting.
- J. To minimize driveway and private street access into the right-of-way.
- K. To preserve the existing ecological balance.
- L. To protect prominent ridges, streams, and environmentally sensitive areas; and the aquatic, biologic, geologic, and topographic features therein.
- M. To protect all identified archaeological and paleontological resources.
- N. To provide a review process of all projects which are visible from Mulholland Drive to assure their conformance to the purposes and development standards contained in the Specific Plan and the Landform Grading Manual. (AR 4-5.)

The MSPSP contains an expansively defines Project:

“The construction of any building or structure, or the addition to, alteration, conversion, or change of use of any land, building or structure on a lot located in whole or in part within the Specific Plan Area; or any construction, alteration, conversion, or change of use of any building, structure or land in the right-of-way. For purposes of this Specific Plan, the term project shall not include interior remodeling.” (AR 7.)

The MSPSP also provides:

“No permit for the use of land; building permit; grading permit . . . shall be issued for a project, until plans, elevations and/or other graphic representations of the project have been reviewed and approved by the Director² acting on a recommendation of the

² “Director” is defined in the MSPSP as, “The Director of the City planning Department or his or her authorized representative.” (AR 6.)

Board³ Where the provisions of LAMC Sections 11.5.7 and 16.50 [Design Review Board Procedures] differ, the provisions of LAMC Section 11.5.7 shall supercede those of LAMC Section 16.50.”⁴ (AR 24.)

Thus, before building permits may be issued for projects within the MSPSP, the Director must review and approve the design after considering the recommendation of the Board. (AR 24.)

The LAMC specifies:

“No building permit shall be issued for any building or structure regulated by a specific plan where design review is required, unless the Director has reviewed and approved the project after finding that the project complies with the design criteria and guidelines set forth in the specific plan and after considering the recommendation of the design review board, if any. . . .” (LAMC, § 16.50, subd. (D)(1)(b).)

The Board is required to “review applications and accompanying materials in relation to compliance with the design components and criteria set fort in [LAMC section 16.50], any applicable specific plan and adopted design guidelines, and provide their recommendations to the Director.” (LAMC, § 16.50, subd. (D)(1)(c).) The Board must also conduct a noticed public hearing prior to issuing its “recommendation to approve, conditionally approve or disapprove an application” (*Id.*, § 16.50, subd. (E)(3)(b)(2).)

The Board’s duties include advising the Director:

“on aspects of exterior design; site layout; grading; driveway access; landscaping; and height, bulk, materials, textures and colors of any building, structure, sign or other development of property or appurtenances or alterations thereto after reviewing plans, elevations and/or other graphic representations for a project to assure compliance with the criteria set forth in [the MSPSP].” (AR 25.)

Using the Mulholland Scenic Parkway, the MSPSP creates an Inner and Outer Corridor. The Inner Corridor extends from the parkway right-of-way “plus the additional area which extends 500 feet outwards from the outermost boundaries of the right-of-way” (AR 6.) The Outer

³ “Board” is defined in the MSPSP as, “The Mulholland Scenic Parkway Design Review Board.” (AR 6.)

⁴ The MSPSP has not been amended since its adoption in 1992. (AR 127.) The reference to LAMC section 11.5.7 is to the version in effect in 1992. The City adopted the current version of LAMC section 11.5.7 in 2000. (AR 127.)

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Corridor “lies between the Inner Corridor’s outermost boundary and one-half mile outward from the right-of-way” (AR 7.)

The MSPSP creates regulations specific to the Inner Corridor (AR 7-15 [MSPSP Section 5]) and to the Outer Corridor. (AR 20 [MSPSP Section 6].) The MSPSP sets forth environmental protection measures applicable to both the Inner and Outer Corridors. (AR 10, 15.) The environmental protection measures provide that certain acts (e.g., grading, altering or removing prominent ridges [AR 10], placement of structures [AR 10], removal of earth near a streambank [AR 11]) are subject to the Director’s approval “acting on the recommendation of the Board” through the design review process. (AR 10, 11, 24.)

The Director’s Authority

The City of Los Angeles Charter (Charter) provides the Director with certain powers and duties. (Charter, §§ 550, 553.) For example, the Director has the authority to propose or initiate “[a]n ordinance, order or resolution . . .” related to zoning, land use regulations, private street regulations and public projects. (*Id.*, § 558.) Ultimately, the proposed ordinance, order or resolution must be adopted by the City Council. (*Ibid.*)

Resolution of the dispute before the court focuses on provisions within LAMC section 11.5.7 and 16.50.

LAMC section 11.5.7 sets forth specific plan procedures. The section seeks “[t]o establish citywide procedures for review of applications for projects within specific plan areas in accordance with applicable specific plan requirements and the City Charter” and “[t]o establish uniform citywide standards and criteria for processing applications for exceptions from, amendments to and interpretations of specific plans.” (LAMC, § 11.5.7, subd. (A)(1)-(2).)

LAMC section 11.5.7, subdivision (C) provides:

1. **Director’s Authority.** The Director shall have the initial decision-making authority to decide whether an application for a project within a specific plan area is in conformance with the regulations established by this subsection and in compliance with applicable regulations of the specific plan. In addition, the Director shall have the authority to determine what type of projects are exempt from these Project Permit Compliance procedures based on exemption provisions and other regulations contained in individual specific plans.

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(a) The Director shall review and approve, disapprove or approve with conditions an application for a Project Permit Compliance.⁵

(b) In granting a Project Permit Compliance, the Director shall require compliance with the applicable regulations of the specific plan and mitigation of significant adverse effects of the project on the environment and surrounding areas.

...

3. Limitations. The granting of a Project Permit Compliance shall not imply compliance with any other applicable provisions of the Los Angeles Municipal Code. . . .

LAMC section 16.50 provides:

D. Design Review Boards.

1. Authority.

(a) Notwithstanding any provisions of a specific plan to the contrary, no design review required by a specific plan shall be recommended for approval by a design review board or approved by the Director except as provided in this section.

(b) No building permit shall be issued for any building or structure regulated by a specific plan where design review is required, unless the Director has reviewed and approved the project after finding that the project complies with the design criteria and guidelines set forth in the specific plan and after considering the recommendation of the design review board, if any. If no design review board has been appointed, the Planning Department shall review the application and make its recommendation to the Director.

⁵ "Project Permit Compliance" is defined as a "decision by the Director that a project complies with the regulations of the applicable specific plan, either as submitted or with conditions imposed to achieve compliance." (LAMC, § 11.5.7.B.1.)

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(c) Design review boards shall review applications and accompanying materials in relation to compliance with the design components and criteria set forth in this section, any applicable specific plan and adopted design guidelines, and provide their recommendations to the Director.

The 2021 Memorandum

On March 30, 2021, the Director issued the 2021 Memorandum. (AR 125.) The Director expressly advised of the purpose behind the memorandum:

The purpose of this memo is to supersede the 1998 Director of Planning's memorandum and to clarify Project Permit Compliance and Design Review Procedures for Visible and Non-Visible[] Projects in the Mulholland Scenic Parkway Specific Plan area pursuant to Los Angeles Municipal Code (LAMC) Section 11.5.7 and the Mulholland Scenic Parkway Specific Plan (MSPSP, Ordinance No. 167,943). (AR 125.)

The 2021 Memorandum identifies textual ambiguities in the MSPSP. According to the Director, such ambiguities make the MSPSP challenging to enforce and difficult to understand. The Director explained the ambiguities in the MSPSP have led to departures from the MSPSP:

The regulations in the Specific Plan have not been amended since the original adoption of the ordinance in 1992. Ambiguities in the text of the MSPSP, combined with conflicting or outdated regulations in an era of overlapping citywide and state-level regulations, create a specific plan that is challenging to enforce and difficult for stakeholders to understand. This has led to gradual changes to procedures and broadened the scope of the Specific Plan to include Non-Visible projects, resulting in inconsistencies and departures from the original spirit and intent of the Specific Plan. (AR 127.)

The 2021 Memorandum criticizes a memorandum issued in October 15, 1998 (1998 Memorandum). According to the Director, the 1998 Memorandum's interpretation of MSPSP section 3, subdivision (D) is overly broad:⁶

⁶ Section 3, subdivision (D) of the MSPSP provides:

"The regulations of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiate

On October 15, 1998, the Director of Planning issued a memo interpreting the Exemptions in Section 3.D of the Mulholland Scenic Parkway Specific Plan. The interpretation required all projects within the boundaries of the Mulholland Scenic Parkway Specific Plan to be subject to the Specific Plan's provisions if filed after June 29, 1992. That interpretation was based on a City Council Interpretation of Section 3.D of the Specific Plan that arose out of appeals to an earlier Director's Interpretation on the same subject. The Department's assessment or summary approach to the City Council's Interpretation was overly broad. That, in combination with Citywide Code Amendments of Sections 11.5.7 and 16.50 of the Los Angeles Municipal Code (LAMC) a couple years later, inadvertently created additional procedures where they did not previously exist. It resulted in Non-Visible, Outer Corridor projects being subject to the Project Permit Compliance and Design Review Board procedures where previously they had not been. (AR 127.)

The 2021 Memorandum, relying on language in LAMC section 11.5.7, subdivision (C)(1), concluded the Director has the authority to make changes to project permit compliance (LAMC § 11.5.7) and design review board (LAMC § 16.50) procedures. (AR 130.) Based on such authority, the Director advised that "Non-Visible projects are to be subject to Project Permit Compliance, but exempt from Design Review Procedures." (AR 130.) The Director instructed:

“. . . consistent with the purpose of the MSPSP, all Projects in the areas of the [MSPSP] that can be proven to be Non-Visible and clearly comply with: all applicable Specific Plan regulations, applicable Design Guidelines; and conform with Specific Plan Sections 11.J.b.v through 11.J.b.vii regarding prominent ridges, streams, and grading, are required to file for only Project Permit Compliance Procedures unless otherwise stated in this memo." (AR 130-131.)

by application of the property owners or their representatives, and subject of a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, specific plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code." (AR 5.)

Attempted Appeals of the 2021 Memorandum

In April 2021, Petitioner attempted to appeal the 2021 Memorandum contending the Director abused his discretion when he issued it. (Given Decl., Ex. D.) The Director’s staff informed Petitioner it had no right to appeal the 2021 Memorandum. (Given Decl., Ex. D.)

This proceeding ensued.

STANDARD OF REVIEW

Petitioner seeks relief pursuant to Code of Civil Procedure sections 1085 and 1094.5. (Pet., ¶¶ 10, 11.) The court finds, however, Code of Civil Procedure section 1094.5 does not apply here because the 2021 Memorandum is unrelated to “a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the” agency. (Code Civ. Proc. § 1094.5, subd. (a).) Accordingly, the matter is properly reviewed by this court under Code of Civil Procedure section 1085.

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

“There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass’n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy” (*Pomona Police Officers’ Ass’n v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-584.)

“When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: ‘[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.’ [Citations.]” (*Id.* at 584)

Where, as here, the court is required to interpret municipal ordinances, the court does so “in the same manner and pursuant to the same rules applicable to the interpretation of statutes. [Citations.]” (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087.)

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“Although statutory construction is ultimately a judicial function, ‘ “ the contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized [citations].” ’ [Citation.]” (*ibid.*)

The deference provided, however, is situational. Courts give greater deference to an agency’s interpretation of a regulation or ordinance where “the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12 (*Yamaha*); see *Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 241.)

Finally, courts presume the agency’s interpretation is “likely to be correct” where there are “indications of careful consideration by senior agency officials” or “the agency ‘has consistently maintained the interpretation in question.’ ” (*Yamaha, supra*, 19 Cal.4th at 13; see *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1041-1042.) “[A]n agency’s view of the meaning and scope of its own [zoning] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.” (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1015.) However, “ ‘[w]hatever the force of administrative construction . . . final responsibility for the interpretation of the law rests with the courts.’ ” (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 668.)

ANALYSIS

Petitioner contends the Director exceeded his authority when he issued the 2021 Memorandum. Relying on the City Charter and LAMC section 11.5.7, Petitioner argues the Director’s act was *ultra vires* and void.

The City disputes Petitioner’s contention. As a preliminary matter, however, the City argues the matter is not ripe for adjudication.

Ripeness

The City advises:

“After this lawsuit was filed, and in response to the 2021 Memo[randum], City Council adopted a Motion asking the Planning Department to report back to the City Council on various topics related to the 2021 Memo[randum]. [] The existence of this fluid and no-yet-completed legislative process prevents this action from being ripe for adjudication.” (Opposition 11:27-12:2.)

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“ ‘Ripeness’ refers to the requirements of a current controversy. According to the Supreme Court, ‘an action not founded upon an actual controversy between the parties to it, and brought for the purpose of securing a determination of a point of law . . . will not be entertained.’ [Citation.] A controversy becomes ‘ripe’ once it reaches, ‘but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.’ [Citation.]” (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 59.)

Whether a controversy is ripe requires the court to consider two factors. First, the court gauges the fitness of the issues for judicial decision. Second, the court evaluates the hardship to the parties of withholding court consideration. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.)

The court disagrees the City Council’s motion for a “report back” and “analysis” concerning the “reinterpretation of the MSPSP” and the change to the City’s “[l]ong-standing practice . . . to require virtually all new projects in the area to be subject to the provisions of the MSPSP and reviewed by the [Board]” makes the dispute here unripe. (RJN, Exs. 6, 7.) That the City Council’s motion merely seeks information from the City’s planning department does not suggest the City Council may take some action based on the 2021 Memorandum. The motion, for example, does not raise the Director’s authority to reinterpret the MSPSP. While the City Council ultimately could take some action adverse to the provisions in the 2021 Memorandum, nothing suggests such a decision is imminent or that the City has taken any action. (Given Reply Decl. ¶¶ 4-5, Ex. J-K.) The City’s argument suggests absent some affirmative closure of the issue by the City Council, the issue will always be unripe.

Moreover, from Petitioner’s perspective, as a practical matter, delayed judicial review here—during some undefined period of alleged unripeness—results in no public participation in decision-making concerning non-visible projects. As noted by the City, the Director’s interpretation omitting Board review “may reduce the City’s ability to protect our Wildland Urban Interface and manage our threatened natural resources.” (RJN, Ex. 6.) Without Board review, Petitioner has no ability to be heard on projects it believes fail to comply with the MSPSP.

Based on the foregoing, the court finds “the facts have sufficiently congealed to permit an intelligent and useful decision to be made.” (*City of Santa Monica v. Stewart, supra*, 126 Cal.App.4th at 59.) The issue is fit for judicial decision given that the City is currently using the 2021 Memorandum for proposed projects. To preclude judicial review here subjects Petitioner to hardship for some undefined period based on the City Council’s request for information. The court therefore finds the controversy here is ripe for review.

Director’s Authority to Issue the 2021 Memorandum

To be clear, the issue here is not whether the Director may issue certain guidance through a memorandum for stakeholders. (See Opposition 15:8-27 [memoranda examples].) At issue here

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is the contents of the 2021 Memorandum, and the Director's authority to issue a directive specifying which projects within the MSPSP were no longer subject to review by the Board.⁷

LAMC section 11.5.7 governs project permit compliance—a determination by the Director “that a project complies with the regulations of the applicable specific plan” (LAMC, § 11.5.7, subdivision (B)(1).)

The LAMC specifies “the Director shall have the authority to determine what types of projects are exempt from these Project Permit Compliance procedures based on exemption provisions and other regulations contained in individual specific plans.” (LAMC, § 11.5.7, subd. (C)(1) [emphasis added].) The plain language of the ordinance provides authority to the Director to exempt projects from the project permit compliance procedures—not exempt projects from the design review procedures of the MSPSP. Nothing in LAMC section 11.5.7, subdivision (C)(1) permits the Director to instruct “that non-visible projects are subject to Project Permit Compliance procedures but not Design Review Procedures of the MSPSP if they fully comply with the MSPSP's regulations.” (Opposition 13:24-26.) Under the plain language of the ordinance, the Director's authority to exempt projects is limited to the “Project Permit Compliance procedures” (LAMC, § 11.5.7, subd. (C)(1).)

The court acknowledges in 1992 when the City adopted the MSPSP the process of project permit compliance set forth in LAMC section 11.5.7 did not exist. (Opposition 13:26-27.) The court disagrees with the City's assessment that “the adoption of new Code and the [non-binding] Design and Preservation Guidelines, years later, elevated non-visible projects from a ministerial process to a discretionary process and Design Review.” (Opposition 13:27-14:2.)

The MSPSP—adopted in 1992—specifies the requirement of a design review process by the Board prior to the City issuing a building permit for a project. (AR 24.) All projects—whether visible or not—within the MSPSP are subject to the design review process. (AR 7 [project definition “within the Specific Plan Area”], 24 [“[n]o permit . . . shall be issued . . .”].) There can be no reasonable argument there is an ambiguity in the MSPSP concerning the design review process given the MSPSP's definition of project. Despite the Director's claim to the contrary, later amendments to the LAMC or design guidelines did not amend the MSPSP and “elevate[] non-visible projects from a ministerial process to discretionary” one.⁸ (Opposition 13:27-14:2.)

Moreover, while the Director may find a project “complies with the with the regulations of the applicable specific plan” in the context of project permit compliance (LAMC, § 11.5.7, subd. (B)(1)), a design review board has a different role. Design review boards “evaluate the

⁷ Petitioner's apparent acceptance of the 1998 Memorandum does not inform the Director's authority to issue the 2021 Memorandum. (See Opposition 16:20-24.)

⁸ The City's claim “the only reason” non-visible projects are subject to design review is based on the 1998 Memorandum and later LAMC amendments eludes the court. The 1992 MSPSP clearly requires—consistent with the City's long-standing practice—design review of virtually all projects within the MSPSP area. (Opposition 14:7-14.)

placement of mass, form, spatial elements and overall quality of the design of proposed projects based on defined objectives established in specific plans.” (LAMC § 16.50, subd. (A).) The Director has no authority on his or her own to approve project design without considering a recommendation from the design review board. (*Id.* at subd. (D)(1)(a)-(b).) Design review also requires a public hearing. (*Id.* at subd. (E)(3)(b)(2).)

Given the design review procedures specified in the MSPSP for all projects within the MSPSP area, the 2021 Memorandum effectively amends the MSPSP—it is not mere guidance; it is a directive. The Director’s reliance on LAMC section 11.5.7, subdivision (C)(1) as authority to eliminate the design review process for non-visible projects within the MSPSP is unavailing. LAMC section 12.32 governs the procedures for amendment of a specific plan. (LAMC, § 11.5.7, subd. (A).) Such changes are legislative and beyond the Director’s authority.⁹ (See LAMC, § 12.32.)

Other arguments made by the City not yet squarely addressed are similarly unpersuasive.

First, the 2021 Memorandum does not merely supersede the 1998 Memorandum. The 1998 Memorandum interpreted the exemptions in section 3, subdivision (D) of the MSPSP. (AR 127.) Exemptions at issue in that section turned on the effective date of the MSPSP and the timing of certain entitlements. The 2021 Memorandum purported to eliminate the design review process for non-visible projects within the MSPSP area.

Second, the 1998 Memorandum could not have relied on the “same authority” as the 2021 Memorandum.¹⁰ LAMC section 11.5.7, as relied upon by the Director, did not read as it does today until 2000—two years after the 1998 Memorandum. (AR 129-130. [“In 2000, when the City Council adopted Ordinance No. 173455, an ordinance amending LAMC Section 11.5.7 as a part of the updates arising from City Charter Reform, a new Project Permit Compliance process was introduced applicable to all Specific Plans for Projects to demonstrate compliance with the regulations of the plan through mandated Findings, which ceased ministerial review of compliance.”])

Third, the MSPSP has not been amended since 1992. Thus, any references within MSPSP to LAMC section 11.5.7 do not refer to LAMC section 11.5.7 as it reads today with the project permit compliance process. Moreover, without regard to non-existence of the project permit compliance review process, the City has identified no conflict between LAMC sections 16.50 and 11.5.7. The provisions govern two separate review processes.

Finally, the City’s interpretation of its municipal code is entitled to no deference where the interpretation suggesting the Director had authority to issue his directive is clearly erroneous.

⁹ The Director could initiate the process for consideration of an amendment to the MSPSP. (LAMC, § 12.32, subd. (A).)

¹⁰ The court offers no opinion concerning the authority of the then director to issue the 1998 Memorandum.

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(Opposition 16:6-13.) Moreover, as noted in the City's motion, the 2021 Memorandum is a "reinterpretation" of a "[l]ong-standing practice" that may reduce "the City's ability to protect [its] Wildland Urban Interface and manage [its] threatened natural resources." (RJN, Ex. 6.) The City's motion also makes clear its legally-supported and long-standing interpretation of the MSPSP is "to require virtually all new projects in the area to be subject to the provisions of the MSPSP and reviewed by the [Board]." (RJN, Ex. 6.)

The City's Duty

The City contends even if Petitioner is correct and the Director exceeded his authority when he issued his directive through the 2021 Memorandum, the City argues that it has no duty to withdraw or alter the motion. The City contends the 2021 Memorandum reflects a discretionary decision by the Director such that no non-discretionary mandatory duty is at issue. The court disagrees.

The Director has a ministerial duty to act in conformity with the law. Doing otherwise is arbitrary and capricious. The Director's 2021 Memorandum eliminating the design review process in the MSPSP for non-visible projects is arbitrary and legally unsupported. The Director cannot exercise his discretion—to the extent he may have discretion—in an arbitrary and capricious manner. The Director's good faith is of no consequence where he lacks the legal authority to act.

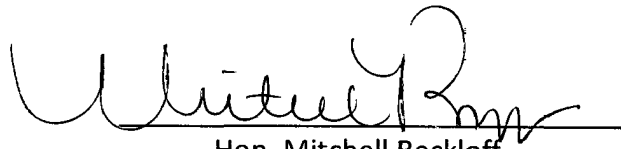
CONCLUSION

Based on the foregoing, the petition is granted. The Director may not authorize non-visible projects in the MSPSP from the design review procedures of the MSPSP. The City shall rescind the 2021 Memorandum.

Nothing herein is intended to limit the authority of the Director provided by LAMC sections 11.5.3 and 11.5.7, subdivision (H).

IT IS SO ORDERED.

August 12, 2022



Hon. Mitchell Beckloff
Judge of the Superior Court

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