

FREDRIC D. WOOCHE (SBN 96689)
BEVERLY GROSSMAN PALMER (SBN 234004)
STRUMWASSER & WOOCHE LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, California 90024
Telephone: (310) 576-1233
Facsimile: (310) 319-0156
E-mail: bpalmer@strumwooch.com

FILED
Superior Court of California
County of Los Angeles

FEB 19 2016

Sherri R. Carter, Executive Officer/Clerk
By Robert Karapetyan, Deputy
Robert Karapetyan

Attorneys for Petitioner and Plaintiff Fix the City, Inc.

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

FIX THE CITY, INC., a California nonprofit corporation,

Petitioner and Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. BS159574

FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

(Public Resources Code, § 21168; Code of Civil Procedure, §§ 526, 1085 & 1097; Government Code, § 65300.5; Los Angeles City Charter, §§ 555, 556 & 558)

CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") ACTION

Related to Case Nos. BS157831, BS157813, and BS159626

Department 85

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 Comes now Petitioner and Plaintiff, Fix the City, Inc., and alleges as follows:

2 **INTRODUCTION**

3 1. Petitioner Fix the City, Inc., by this Verified Petition for Writ of Mandate, challenges
4 the repeated failure of Respondents City of Los Angeles and City Council of the City of Los Angeles
5 (collectively, "Respondents") to adhere to the requirements of the California Environmental Quality
6 Act ("CEQA"), to follow the procedures set forth in its own Los Angeles City Charter, to maintain
7 consistency within its General Plan and to abide by the requirements of state planning laws, when
8 adopting an amendment to the General Plan of the City of Los Angeles. Fix the City brings this
9 lawsuit in its capacity as private attorney general.

10 2. This is not the first time that Fix the City has been forced to turn to the courts as a result
11 of Respondents' actions concerning the General Plan. On September 8, 2015, Fix the City filed a suit
12 challenging Respondents' August 11, 2015, approval of Mobility Plan 2035 ("MP2035"), an update to
13 the legally-required circulation element of the City's General Plan, along with the certification of the
14 Environmental Impact Report ("EIR") regarding MP2035 and the adoption of the Statement of
15 Overriding Considerations for the significant, unavoidable environmental impacts of adopting and
16 implementing MP2035 (LASC Case No. BS157831). In the September 8, 2015 lawsuit, Fix the City
17 challenged the process by which the City Council approved MP2035 because it failed to abide by the
18 procedures established in the Los Angeles City Charter and Municipal Code for amending the General
19 Plan.

20 3. In direct response to Fix the City's September 8, 2015 lawsuit, on November 25, 2015,
21 Respondent the Los Angeles City Council ("City Council"), admitting that these actions were taken in
22 order to "cure" the procedural defect, repealed and thereby amended an entire element of the City of
23 Los Angeles Plan, more than 75 days after the City Planning Commission had approved the General
24 Plan Amendment. The amended/repealed element was the required circulation element of the General
25 Plan, which the City has called Mobility Plan 2035 ("MP2035"). This amendment was never sent to
26 the City Planning Commission, as required by Charter Section 555 and LAMC 11.5.6. Instead, on the
27 same day, after repealing MP2035, the City Council adopted a different version of MP2035 to replace
28 the repealed version, in an attempt to remedy the procedural violations it had made in August, but in

1 the process it committed new and additional procedural errors. Respondents relied upon the
2 previously-certified EIR as a basis for their November 25th approval of MP2035 and ignored new
3 substantial evidence.

4 4. The version of MP2035 adopted on November 25, 2015, contains many of the same
5 elements of the version of MP2035 adopted on August 11, 2015, and relies upon the previously
6 certified EIR, so it therefore contains all of the flaws previously identified by Fix the City in its
7 September 8, 2015 lawsuit. The Staff Report to the City Council, and the motions voted by the
8 Council on November 25, 2015, failed to acknowledge that the adequacy of the EIR was the subject of
9 a current lawsuit by Fix the City. MP2035 is the “constitution” for the City of Los Angeles street
10 system, establishing which streets will have supposed improved transit access, which neighborhoods
11 will benefit from supposed improved pedestrian amenities, and which streets will lose lanes of
12 vehicular traffic to accommodate bike lanes and/or bus lanes. It also amends the Land Use Element of
13 the General Plan (35 community plans). Respondents acknowledged that implementation of MP2035
14 would have significant, unavoidable impacts to transportation, including significantly increased
15 congestion, intrusion of traffic into residential neighborhoods, failure to comply with the existing
16 regional Congestion Management Plan, and diminished access and response time of emergency
17 responders. The policies set forth in MP2035 conflict with numerous policies in other existing
18 elements of the City’s General Plan, including elements in its 35 Community Plans (which constitute
19 the land use element of the General Plan). In fact, MP2035 is an immobility plan that will have
20 significant, unmitigatable environmental, safety and public health impacts.

21 5. The November 25, 2015 approval of MP2035, as well as the January 20, 2016
22 amendments, and reliant on the EIR, was in violation of both procedural and substantive requirements
23 of CEQA, in contradiction to clear procedural requirements of Section 555 of the City Charter, and
24 furthered inconsistency in the City’s fundamental planning documents. Petitioner turns to this Court
25 to enforce these legal requirements and ensure that Respondents’ consideration of MP2035 properly
26 evaluates the plan’s potential environmental impacts, abides by the City’s procedural rules, and does
27 not introduce inconsistency into the General Plan.

1 **PARTIES**

2 6. Petitioner and Plaintiff, FIX THE CITY, INC. ("Fix The City" or "Petitioner") is a
3 California nonprofit public benefit corporation duly incorporated under the laws of the State of
4 California. Fix The City's mission is to improve and maintain quality of life and public safety by
5 facilitating neighborhood improvements and neighborhood protection; supporting local infrastructure;
6 improving the efficiency of local government; and advocating for other improvements to the
7 environment throughout the City of Los Angeles. Fix The City participated in the actions challenged
8 herein, submitting oral and written comments to the record on multiple occasions. Petitioner's
9 members are residents and taxpayers of the City of Los Angeles.

10 7. Respondent and Defendant CITY OF LOS ANGELES (the "City") is the public
11 governmental entity serving the people of the City of Los Angeles.

12 8. Respondent and Defendant LOS ANGELES CITY COUNCIL (the "City Council") is
13 the elected governing body of the City of Los Angeles, a charter city in the State of California. The
14 City Council has an office in Los Angeles, California.

15 9. Petitioner is unaware of the true names and capacities of Respondents DOES 1 through
16 100, inclusive, and they are therefore sued by such fictitious names pursuant to Code of Civil
17 Procedure section 474. Petitioner alleges on information and belief that each such fictitiously named
18 Respondent is responsible or liable in some manner for the events and happenings referred to herein,
19 and Petitioner will seek leave to amend this Petition to allege their true names and capacities after the
20 same have been ascertained.

21 **FACTUAL BACKGROUND**

22 10. MP2035 is intended to serve as the new Circulation Element of the City of Los Angeles
23 General Plan. State law and the Los Angeles City Charter require that the City prepare and adopt a
24 General Plan, which is to serve as the constitution for future development in the City. State law
25 requires that the general plan include, among its mandatory elements, a circulation element.
26 (Government Code, § 65302, subd. (b).) In the City of Los Angeles, the circulation element of the
27 General Plan has previously been called the Transportation Element, and was adopted in 1999.

1 11. MP2035 is an update to the Transportation Element. The stated purpose of MP2035 is
2 to guide “mobility decisions,” and serve as a “transportation blueprint” for the City until at least 2035,
3 or for the foreseeable future. MP2035 includes both general policies and a more specific action plan
4 that identifies roadways for pedestrians, bicycles, vehicles, or transit “enhancements,” as well as new
5 street design standards. Although MP2035 does not authorize any specific physical project, it sets the
6 stage for such future ministerial and/or discretionary approvals by establishing which projects will be
7 found consistent with the City’s plan in the future, and facilitates the ultimate approval and
8 construction of the roadway improvements specifically identified in MP2035’s action plan, some of
9 which may be constructed or implemented without further approval process or without additional
10 environmental review pursuant to state laws. MP2035 is intended to comply with state legislation
11 enacted in 2008 which requires cities to include multi-modal transportation planning in the required
12 general plan circulation elements; and enable the city to apply for state and federal grants to
13 implement the projects included in MP2035.

14 12. The City began preparing MP2035 by convening several task force meetings in 2011.

15 13. On April 13, 2013, the City issued the Notice of Preparation for the EIR for MP2035.

16 14. On April 16 and 20, 2013, the City convened two public scoping meetings for the
17 MP2013 EIR.

18 15. On May 16, 2013, the public comment period on EIR scoping closed. Over 30
19 comments on the scope of the EIR were received.

20 16. On February 13, 2014, the Draft EIR (“DEIR”) was released for a 90-day public
21 comment period, which closed on May 13, 2014. More than 40 comments were provided on the
22 DEIR.

23 17. On November 20, 2014, staff from the Department of City Planning presented to the
24 City Planning Commission regarding MP2035.

25 18. On February 19, 2015, a Recirculated DEIR (“RDEIR”) was released for an additional
26 45-day public comment period which concluded on April 6, 2015. The RDEIR presented changes to
27 MP2035 that had been made since the plan was first developed and to present revised analysis of
28 project impacts. The plan analyzed in the RDEIR included additional miles of plan using transit,

1 expanded bicycle routes (“road diets” that convert travel lanes to bicycle lanes), and a network to
2 support pedestrian activity. The RDEIR included analysis of changes to Westwood Boulevard
3 different from those proposed in the DEIR. More than 150 comments were received on the RDEIR.

4 19. The Draft MP2035 was recirculated for public comment along with the RDEIR.

5 20. In the first half of May 2015, the Final EIR (“FEIR:”) was released.

6 21. On May 28, 2015, after a public hearing, the City Planning Commission (“CPC”), the
7 body of appointed officials designated by the City to review City-wide planning proposals, reviewed
8 MP2035 along with a Five-Year Implementation Strategy. Pursuant to the process set forth in the Los
9 Angeles City Charter, the CPC amended and approved MP2035 as an amendment of the General Plan.
10 The CPC approved and recommended the City Council adopt a resolution certifying the EIR for
11 MP2035, including Findings of Fact, a Mitigation Monitoring Plan, and a Statement of Overriding
12 Considerations. The CPC also approved and recommended that the City Council adopt amendments
13 to the terminology of the City’s 35 Community Plans so that the street designations in those plans
14 conforms to the street designations employed in MP2035.

15 22. On June 5, 2015, the Mayor of the City of Los Angeles concurred in the actions of the
16 CPC and recommended to the City Council that it adopt MP2035, certify its EIR, and adopt the other
17 actions approved by the CPC.

18 23. On June 17, 2015, Respondents circulated an Addition to the FEIR consisting of new
19 responses to comments submitted after the close of the public comment period, as well as corrections
20 and additions to the FEIR.

21 24. On August 4, 2015, a joint hearing of the Los Angeles City Council Planning and Land
22 Use Management (“PLUM”) and Transportation (“T”) Committees convened a joint public hearing on
23 MP2035. The PLUM and T Committees recommended that the City Council adopt MP2035, certify
24 its EIR, and adopt all of the related actions approved by the CPC and the Mayor. The PLUM and T
25 Committees, however, made two substantive amendments to MP2035: (1) to amend MP2035 to
26 require that equity is an important factor in prioritizing projects for implementation; and (2) to
27 designate City Council as an implementing agency for MP2035, in addition to the already-designated
28 Office of the Mayor. On August 11, 2015, after permitting limited public comment on the item, the

1 City Council, with a vote of eleven in favor and two opposed, adopted MP2035 with a third
2 amendment, to add public safety as a criterion to evaluate implementation of the projects set forth in
3 MP2035, certified its EIR, and adopted the Statement of Overriding Considerations, Findings, and a
4 Mitigation Monitoring Program, along with resolutions directing other conforming amendments to the
5 City's planning documents. The City Council referred back to the PLUM and T Committees seven
6 motions brought by Councilmembers requesting changes to the streets included in MP2035's action
7 plan in various respects, stating that additional environmental review would be required for such
8 amendments. It did not send back to CPC the three amendments that it adopted on August 11, 2015.
9 The last day for the City Council to send the amended plan back to CPC was August 19, 2015 (75 days
10 after the Mayor's recommendation).

11 25. On August 19, 2015, 75 days elapsed from the day the Mayor concurred with the
12 actions of the CPC.

13 26. On September 8, 2015, Petitioner filed a lawsuit challenging the adoption of MP2035
14 and the certification of its EIR. Petitioner also challenged the City Council's decision to adopt a
15 version of MP2035 that had not been reviewed by the City Planning Commission or the Mayor as
16 required by Los Angeles City Charter section 555.

17 27. On October 30, 2015, the City Council initiated a motion to rescind the
18 August 11, 2015 version of MP2035 and to adopt the version of MP2035 that was reviewed by the
19 City Planning Commission and the Mayor on May 28 and June 5, 2015. The motion did not mention
20 CEQA, the EIR, or environmental review.

21 28. On October 30, 2015, the City Clerk sent a "Notice to Interested Parties" informing
22 them of a joint hearing by the PLUM and Transportation Committees to hear the motion of October
23 30, 2015 to rescind and readopt the Mobility Plan. No mention of CEQA or the EIR was included in
24 the notice.

25 29. On October 31, 2015, the City Clerk published a notice in the *Los Angeles Times* of the
26 November 10, 2015 joint committee hearing on the rescinding and adopting the unamended plan. No
27 mention of CEQA or the EIR was made in the notice.

1 30. On November 10, 2015, the City Council convened a joint meeting of the PLUM and T
2 Committees to hold a public hearing on the repeal and re-adoption of MP2035. Numerous members of
3 the public testified both in support of and in opposition to MP2035. Fix the City submitted written
4 comments and presented oral testimony at the November 10th public hearing. Prior to the Council
5 hearing the motion to rescind and readopt, the Council went into closed session to discuss the pending
6 litigation challenging procedural violations Charter Section 555, Municipal Code Section 11.5.6 and
7 the inadequacy of the EIR. No action was taken.

8 31. The Staff Report prepared by the Director of Planning, dated November 10, 2015,
9 asked that the City Council determine that no subsequent environmental impact report or negative
10 declaration was required under CEQA Section 15162. No Addendum was provided in support of this
11 action.

12 32. None of the public notices announcing the November 10, 2015 hearing mentioned
13 CEQA, the EIR, or environmental review.

14 33. During the November 10th public hearing, the motion was revised to request that City
15 Council act as follows:

- 16 a. "CONSIDER and FIND that the environmental clearance for this project with
17 the Final Environmental Impact Report in Case No. ENV-20130911-EIR
18 (certified on August 11, 2015) pursuant to California Environmental Quality Act
19 Guidelines Section 15162.
- 20 b. RESCIND the August 11, 2015 resolution adopting the Mobility Plan 2035 as
21 amended by the City Council.
- 22 c. ADOPT the accompanying RESOLUTION adopting the draft Mobility Plan
23 2035 as considered and recommended by the Los Angeles City Planning
24 Commission ("LACPC") and the Mayor on May 28, 2015 and June 5, 2015,
25 respectively.
- 26 d. SUPPORT the Director of Planning initiation of the three amendments, originally
27 adopted by City Council on August 11, 2015, to be heard by the LACPC."
28
29
30

1 34. Members of the PLUM committee voted 3-2 in favor of recommending the Council
2 adopt items (b) and (c) above, and voted 4-0 to recommend that the Council adopt item (d). Members
3 of the T Committee voted 2-2 and therefore had no recommendation for Council on items (b) and (c),
4 and recommended adoption of item (d).

5 35. On November 25, 2015, the City Council voted "Forthwith" 9-3 to adopt items (a)-(c)
6 above, and voted 10-1 to adopt item (d) above. Petitioner Fix the City submitted written comments
7 prior to the City Council's November 25, 2015 hearing on this item objecting to the City's repeated
8 procedural violations in its actions to amend the General Plan and its lack of notice and documentation
9 of compliance with CEQA.

10 36. On December 3, 2015, Respondents published a notice of a December 17, 2015 Los
11 Angeles City Planning Commission public hearing on amendments to MP2035. On December 17,
12 2015, the City Planning Commission approved a resolution that amended the Circulation Element by
13 adopting the "Amended Mobility Plan 2035," which was specifically intended to include "provisions
14 related to equity, Council oversight, public safety, community input and flexibility in
15 implementation." The City Planning Commission recommended that the City Council find that the
16 EIR certified on August 11, 2015 and its Addendum dated December 3, 2015, satisfied the
17 requirements of CEQA.

18 37. On December 18, 2015, the Mayor informed the City Council that he concurred in the
19 City Planning Commission's December 17th action.

20 38. On January 19, 2016, the PLUM Committee of the Los Angeles City Council held a
21 hearing on the adoption of the amendments to MP2035. The PLUM Committee recommended that the
22 Council adopt the resolution amending the Circulation Element by amending the Mobility Plan 2035
23 and find that the August 11, 2015 EIR and the December 3, 2015 Addendum complied with CEQA.

24 39. On January 20, 2016, the City Council took the final action to adopt the amendments to
25 Mobility Plan 2035.

26 **Mobility Plan 2035 and EIR**

27 40. MP2035 provides for a "multi-modal" transportation network throughout the City,
28 identifying streets as appropriate for a variety of special treatments in the future. These designations
29

1 include "transit enhanced network" ("TEN"), on which special treatment will be given to prioritize
2 transit; "vehicle enhanced network" ("VEN"), streets with very high volumes of traffic on which bus
3 speed are to be enhanced, "neighborhood enhanced network," ("NEN") which are considered
4 appropriate for improvements to the pedestrian and other slow-moving transportation experience; and
5 "bicycle enhanced network," ("BEN") on which protected bike lanes are anticipated to be installed in
6 the future by converting travel lanes to a bike lane, thereby slowing traffic and emergency response
7 times, increasing congestion air pollution and greenhouse gases.

8 41. The EIR for MP2035 analyzed at a programmatic level the environmental impacts of
9 implementing the proposed street network changes. Respondents did not conduct an Initial Study to
10 identify which impacts the EIR would focus upon. The EIR analyzed potential impacts in the
11 following areas: (1) transportation, parking, and safety; (2) land use and planning; (3) air quality; (4)
12 greenhouse gas emissions; (5) noise and vibration; and (6) biological resources.

13 42. The EIR concluded that the implementation of MP2035 would have significant and
14 unavoidable impacts to transportation and safety, substantially reducing the number of street segments
15 citywide operating at acceptable impact levels as a result of plan implementation; and that there would
16 be *less congestion without the plan*. As a result of the MP2035-related increased congestion, the EIR
17 concluded that traffic would also divert onto parallel residential streets that are currently not as
18 congested, increasing neighborhood traffic intrusion. Implementing MP2035 will also result in
19 increased congestion on multiple freeway segments, as compared to no-project conditions. Finally,
20 MP2035 will decrease the ability of emergency responders to travel to emergencies due to the
21 increased congestion caused by implementation of the plan. The EIR also found significant and
22 unavoidable impacts due to noise and vibration impacts from increased bus traffic and on biological
23 resources during construction.

24 43. New substantial evidence was submitted by residents of Silver Lake documenting the
25 adverse impacts of a road diet on Rowena Avenue, including an admission by the local Los Angeles
26 Fire Department Captain of slower response time due to the road diet, a serious pedestrian accident,
27 and dangerous conditions on side streets used by angry motorists seeking an alternative to the gridlock
28 on Rowena due to the road diet. The videos submitted regarding Rowena Avenue's road diet are

1 empirical, substantial evidence that road diets do not make pedestrians safer, contrary to the claims of
2 the EIR and the Mobility Plan.

3 44. Respondents adopted MP2035 in spite of these impacts, relying on purported
4 "aspirational" benefits from reducing vehicle trips, in spite of explicitly recognizing that the plan
5 would actually increase congestion on existing streets and increase vehicular delay. Respondents were
6 not presented with an adequate baseline against which to compare impacts to public safety, were not
7 presented with accurate calculations of air quality and greenhouse gas emissions increases, or a
8 cumulative analysis for projects that were authorized by MP2035 and relevant state laws, and thus
9 their determination to adopt MP2035 was not based upon substantial evidence nor compliant with
10 CEQA. Finally, the Statement of Overriding Considerations falsely claimed that the plan would result
11 in a reduction of greenhouse gases when in fact, its substantial increase in congestion would do the
12 opposite and increase greenhouse gases from gridlocked traffic.

13 JURISDICTION AND VENUE

14 45. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of
15 the California Constitution and sections 1085, and 1094.5 of the Code of Civil Procedure.

16 46. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure 394
17 in that Respondents are government entities and/or agents of the City of Los Angeles.

18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 47. As set forth in paragraph 6 above, Petitioner participated throughout the approval
20 process for MP2035 (including the original approval and the subsequent approval repeal and re-
21 adoption) and its EIR, submitting both written and oral comments to Respondents about the allegations
22 in this Verified Petition.

23 48. Petitioner has complied with the requirements of Public Resources Code section
24 21167.5 by serving a written notice of Petitioner's intention to commence this action on the
25 Respondents on December 14, 2015. Copies of the written notice and proof of service are attached
26 hereto as Exhibit A.

27 49. Petitioner has complied with the requirements of Public Resources Code section
28 21167.7 by sending a copy of this Petition to the California Attorney General on December 15, 2015.

1 A copy of the letter transmitting this Petition and the proof of service is attached hereto as Exhibit B.

2 50. Petitioner has satisfied all applicable prerequisites to seeking judicial review of
3 Respondents' actions.

4 **FIRST CAUSE OF ACTION**
5 **Violation of California Environmental Quality Act**
6 **(Public Resources Code, § 21168)**

7 51. Petitioner incorporates by reference all the allegations contained in the previous
8 paragraphs as though fully set forth herein.

9 52. CEQA is designed to ensure that the long-term protection of the environment be the
10 guiding criterion in public decisions. CEQA accomplishes its purpose by requiring public agencies to
11 determine and to disclose to the public detailed information about the effect that a proposed project
12 may be expected to have on the environment. The term "project" applies to the "whole of an action"
13 which has the potential for resulting in a direct or reasonably foreseeable indirect change in the
14 environment, including, for example, general level activities such as the creation of a general or
15 specific plan for a specified geographic area. Under CEQA, in fact, the environmental analysis of
16 general plans such as the MP2035 is especially critical because conformity to such plans can, in
17 certain cases, exempt a future project from detailed review under CEQA. In such cases, the only
18 critical analysis of the effects of plan build-out will be in the EIR conducted for the general plan.
19 Thoughtful and accurate analysis is thus crucial.

20 53. Instead of conducting a new environmental review for the rescission and readoption of
21 MP2035, Respondents relied on CEQA Guidelines section 15162 to utilize the EIR certified on
22 August 11, 2015 for the first version of MP2035. Section 15162 allows for reliance on a previously-
23 certified EIR, but not when new information, not available prior to certification of the EIR,
24 demonstrates that the significant effects of a project will be greater than anticipated in the EIR, if new
25 significant effects not studied in the EIR will be created by the project, or if mitigation measures or
26 alternatives not previously studied are available to mitigate or reduce the significant effects of a
27 project. Respondents *made no findings* in support of their reliance on CEQA Guidelines section
28 15162. Respondents ignored new information available to them regarding the effect of so-called "road
diets" on the residential environment in Los Angeles. Respondents did not address the implications of

1 removing considerations of equity or public safety in the form of first responder access from MP2035.

2 54. Moreover, Respondents also did not comply with CEQA Guidelines section 15164,
3 which requires preparation of an addendum if an agency relies on section 15162 as a basis for making
4 a discretionary approval without any further environmental review. No addendum was prepared for
5 Respondents' November 25, 2015 actions repealing and readopting MP2035. No findings were
6 provided to support reliance on Section 15162.

7 55. Finally, Respondents relied upon an EIR already demonstrated to be flawed. Because
8 Respondents did not revise the EIR, all the flaws previously identified in Fix the City's September 8,
9 2015 lawsuit remain in the EIR, which does not live up to the requirements of CEQA in several critical
10 respects. The entire premise of the environmental analysis is questionable: while acknowledging that
11 MP2035 will increase congestion and the time that motor vehicles, by far the predominant mode of
12 transportation even after implementation of MP2035, spend on the road, the EIR concludes that
13 greenhouse gas emissions will somehow improve as a result of MP2035. This conclusion is not
14 backed by any rational or meaningful analysis. Increased idling time will increase fuel consumption
15 and generate more greenhouse gases and air pollution, harming public health.

16 56. First, the EIR relies on outdated data (or no data) on population, traffic, and other
17 municipal services (e.g., police and LAFD response time and service ratios) to establish the
18 environmental baseline against which impacts of MP2035 implementation are assessed. In spite of the
19 Notice of Preparation being issued in 2013, the EIR relies on data from 2008, even when other more
20 recent sources of information were available and presented for consideration.

21 57. The EIR's conclusions are logically inconsistent with each other and reflect a failure to
22 employ the proper factors to analyze environmental impacts. The EIR fails to account for the increase
23 in vehicle hours travelled due to the increased congestion that will result from the implementation of
24 MP2035. The EIR acknowledges that MP2035 will have a significant impact on City's ability to
25 comply with the regional Congestion Management Plan, yet fails to account for vehicular delay in its
26 calculations of greenhouse gas emissions and air quality. The EIR relies solely on vehicular miles
27 travelled instead of the actual measure of vehicle emissions: vehicle hours traveled.

1 58. . . Indeed, the EIR's analysis of greenhouse gases conceded that as compared to No
2 Project conditions, MP2035 offered a paltry 0.2 percent reduction in emissions, because nearly all of
3 the emission reductions in greenhouse gases ("GHG") will take place as a result of independent state
4 emission standards having no relation whatsoever to MP2035. The EIR acknowledges that in some
5 areas, such as the west side of Los Angeles, greenhouse gas emissions will increase due to the slow
6 rates of travel forecast after the plan has been implemented. The EIR's analysis of air quality impacts
7 is likewise faulty. No data or analysis was provided to support the finding of an overall reduction in
8 GHG as stated in the Statement of Overriding Considerations; the "benefit" cited for GHG was
9 speculative, not based on substantial evidence. Similarly, the EIR relies on a shifting baseline in its
10 analysis of transportation impacts, appearing to take credit for increased transit ridership associated
11 with projects already planned to be constructed. The EIR's baseline and impact comparison shifts in
12 order to create the most favorable perspective for MP2035.

13 59. The EIR's analyses of impacts to public services, especially those related to first
14 responders such as fire and police, are also based on erroneous baseline assumptions and are not based
15 on substantial evidence. The EIR contains no data documenting the current baseline and therefore
16 does not have substantial evidence documenting its conclusions regarding the potential impact of
17 MP2035 on public services. The EIR contains no data regarding how much the implementation of
18 MP2035 will delay response times, with the exception of substantial evidence provided by Fix the
19 City. Substantial evidence obtained from LAFD website and FTC Public Records Act requests, was
20 submitted by FTC as part of the record that shows the slow response times for every fire station in the
21 city. The department responsible for emergency response, the Los Angeles Fire Department, failed to
22 provide any testimony on the plan and its impacts on the operation of the Department. However, at a
23 Town Hall meeting on the Rowena road diet, held on September 15, 2015, the local LAFD Fire
24 Captain stated that the road diet had slowed down the ability of Station 56 to respond to emergencies.
25 The FTC website showed that Station 56 had indeed slowed its response time after the Rowena Road
26 Diet, and that information was also placed into the record. The Town Hall meeting was videotaped and
27 submitted to the City Clerk on November 9, 2015.

1 60. The EIR entirely failed to consider certain environmental impacts, including but not
2 limited to the growth inducing and water supply cumulative impacts of MP2035 and other related land
3 use plans, the urban decay impact of removing parking lanes, an analysis of the impacts of increased
4 vehicle hours travelled, the safety impacts of increased congestion on cyclists and pedestrians, the
5 safety impacts of increasing response times to emergencies, the impact of removing traffic signal
6 requirements imposed as mitigation measures for other projects.

7 61. The EIR's project description is vague and unstable, making it difficult for the public
8 and decisionmakers to understand what project was adopted by the City Council, in contravention to
9 CEQA's requirements of full disclosure.

10 62. The EIR also fails to analyze an adequate range of alternatives as required by CEQA.
11 Public Resources Code section 21102 specifies that public agencies shall not approve projects as
12 proposed "if there are feasible alternatives . . . available which would substantially lessen the
13 significant environmental effects of such projects." In order to achieve this goal, the CEQA
14 Guidelines require that "[a]n EIR shall describe a range of reasonable alternatives to the project . . .
15 which would feasibly attain most of the basic objectives of the project but would avoid or substantially
16 lessen any of the significant effects of the project, and evaluate the comparative merits of the
17 alternatives." (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) Moreover, "the discussion of
18 alternatives shall focus on alternatives to the project or its location which are capable of avoiding or
19 substantially lessening any significant effects of the project, even if these alternatives would impede to
20 some degree the attainment of the project objectives, or would be more costly." (*Id.*, at subd. (b).)
21 The EIR fails to consider any alternatives that do not contain the same types of street networks as
22 MP2035, depriving decisionmakers of the opportunity to evaluate whether other means of addressing
23 transportation and mobility would have fewer environmental impacts than MP2035 and similar
24 programs. Petitioners had submitted among other documents, a detailed study by the RAND
25 Corporation on improving mobility in Los Angeles that included many alternatives to road diets. In
26 addition, the Reason Foundation published its mobility plan for Los Angeles offering alternatives to
27 road diets. The Foundation testified at the public hearing, and submitted its report into the record.
28 None of those alternatives were evaluated in the EIR or its Addendum.

1 The City Planning Commission, as well the Mayor, must make recommendations on General Plan
2 amendments, which are provided to the City Council. (Los Angeles City Charter, § 555, subd. (c).)
3 The number of votes needed in the City Council to adopt any amendment depends upon whether the
4 amendment has the recommendation of the Mayor, the City Planning Commission, both or neither.
5 (*Id.*, subd. (e).)

6 68. MP2035 is a General Plan amendment to the Transportation Element of the City of Los
7 Angeles General Plan, and as such, the City was obligated to follow the procedures set forth in the Los
8 Angeles City Charter for the adoption of a General Plan amendment.

9 69. The repeal of MP2035 was an amendment to the General Plan: it removed an entire
10 element. Yet the City Council took this action unilaterally, without obtaining the review and approval
11 of the City Planning Commission and the Mayor as required by Charter section 555, subd. (c).)

12 70. Respondents also violated Los Angeles Municipal Code section 11.5.6, which
13 elaborates upon the Charter's requirements for the adoption of General Plan amendments. The City
14 Council must take action on a proposed General Plan amendment within 75 days after receiving the
15 recommendations of the City Planning Commission and the Mayor. (LAMC, § 11.5.6, subd. (e).) If
16 no action is taken by the City Council within the 75-day period, the General Plan amendment is
17 *deemed denied*. (*Id.*) Well over 75 days elapsed between the provision of the City Planning
18 Commission's and Mayor's recommendation on the original version of MP2035 and the City
19 Council's November 25, 2015 adoption of that version of MP2035. The City Council had lost the
20 power to adopt the original version of MP2035 and therefore abused its discretion when it adopted
21 MP2035 on November 25, 2015.

22 71. The City Council's adoption of the amendments to MP2035 on January 20, 2016, is
23 likewise invalid, because the City Council cannot amend a document that was not properly adopted in
24 the first instance. The City Council's actions on January 20, 2016 were aimed solely at adding the
25 amendments to the already improperly-adopted MP2035 and therefore are not proper amendments.

26 72. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
27 other available remedies.

1 81. Many of the City's 35 Community Plans contain requirements to maintain a certain
2 Level of Service, which is a measure of through-put of vehicles through intersections. MP2035 will
3 reduce the Level of Service citywide and is fundamentally inconsistent with the Level of Service
4 requirements in the Community Plans

5 82. MP2035's impact on public services such as police and fire is inconsistent with
6 commitments elsewhere in the General Plan to maintain acceptable levels of such service by analyzing
7 the impact of extreme congestion on LAFD response time as required by the City's CEQA Threshold
8 Guide K-2 and K-3, adopted in 2006.

9 83. MP2035 is growth-inducing because it increases the land area on which density
10 bonuses will be available under state and local laws; such growth inducement is contrary to the
11 policies of the General Plan Framework Element which is growth neutral.

12 84. The City abused its discretion by adopting the MP2035 which is inconsistent with other
13 provisions of the General Plan, as required by the Charter, and by adopting the Plan which will cause
14 harm to other sections of the City as proscribed by Charter section 558. A writ of mandate may issue
15 to correct this abuse of discretion and require the City Council to rescind its approval of the Plan.

16 85. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
17 other available remedies.

18 86. Petitioner has a beneficial right to Respondents' performance of their respective duties
19 based on Petitioner's interest in maintaining and improving the quality of the urban infrastructure in
20 the City of Los Angeles, as well as the interest of Petitioner's members in improving quality of life in
21 their own city.

22 **FOURTH CAUSE OF ACTION**
23 **Injunctive Relief**
24 **(Code of Civil Procedure, § 526)**

25 87. Petitioner incorporates all the allegations set forth in the preceding paragraphs as
26 though fully set forth herein.

27 88. Respondents' refusal to comply with the aforementioned provisions of the CEQA, the
28 Los Angeles City Charter, and the Government Code caused and threatens to cause Petitioner
irreparable and substantial harm by establishing the various networks that will permit reduced traffic

1 and parking lanes Citywide and by the City's own analysis increase congestion and neighborhood
2 intrusion of traffic, and delay the ability of first responders to reach medical and fire emergencies. So
3 long as MP2035 remains in effect, proposals consistent with MP2035 can be approved by
4 Respondents/Defendants which will bring about the negative environmental consequences that will
5 have these adverse public safety and public health consequences for the entire city. The Addendum for
6 amending/rescinding MP2035 and adopting the plan without amendments, as passed by CPC on May
7 28, 2015, ignored new substantial evidence that road diets did not necessarily reduce pedestrian
8 accidents (e.g., Rowena Road Diet), did not analyze the safety of side streets filled with angry,
9 speeding drivers (videos were provided as substantial evidence for Rowena), and a statement made by
10 an LAPD traffic officer that Vision Zero would never occur, in his professional opinion. The letter
11 from Fehr and Peers, dated January 19, 2016, did not address the LAPD statement or the statement of
12 Station 56's captain that response time had slowed after the road diet. Instead, the letter relied on
13 speculative, conclusory statements that road diets will increase safety.

14 89. Petitioners have no plain, speedy, and adequate remedy at law, in that unless
15 Respondents/Defendants are enjoined by this Court to rescind the approval of MP2035 and all other
16 associated approvals, development that is inconsistent with the policies of the General Plan may be
17 approved by the City. No amount of monetary damages or other legal remedy can adequately
18 compensate Petitioner and all residents of the City of Los Angeles for the irreparable harm that they
19 will suffer from the violations of law described herein.

20 **FIFTH CAUSE OF ACTION**
21 **Declaratory Relief**
22 **(Code Civ. Proc. § 1060)**

23 90. Petitioner incorporates all the allegations set forth in the preceding paragraphs as
24 though fully set forth herein.

25 91. A dispute has arisen between Petitioner and Respondents, in that Petitioner believes and
26 contends, for the reasons set forth above, that Respondents actions as set forth above were unlawful
27 and invalid. Petitioner is informed and believes, and on that basis contends, that Respondents contend
28 in all respects to the contrary.

1 until such time as the City Council has revised MP2035, its EIR and its Community Plans in a manner
2 that creates consistency within the General Plan and the conforms to the requirements of CEQA and is
3 adopted according to the process set forth in the Los Angeles City Charter;

4 3. That this Court award Petitioner attorneys' fees and costs in its capacity as private
5 attorney general.

6 4. That this Court grant Petitioner such other, different, or further relief as the Court may
7 deem just and proper.

8
9 Dated: February 19, 2016

Respectfully submitted,
STRUMWASSER & WOOCHEER LLP
Fredric D. Woocher
Beverly Grossman Palmer

10
11
12 By: 
13 _____
14 Beverly Grossman Palmer