BS113440 and BS113479
TENTATIVE ORDER

GREATER WEST LA CHAMBER OF COMMERCE's petition for Peremptory Writ is **GRANTED.** CCP §§ 1085, PRC § 21168.5.

WESTWOOD SOUTH OF SANTA MONICA BLVD. HOA's petition for Peremptory Writ is **GRANTED.** CCP §§ 1085, PRC § 21168.5.

The CITY OF LOS ANGELES is **ORDERED** to fully comply with the requirements of the California Environmental Quality Act by conducting an appropriate, complete and comprehensive environmental study for the project. Any project approvals already obtained are invalid. Respondents are restrained from any actions in furtherance of the project unless the resulting document has been prepared, publically circulated, and approved in a manner required by law.

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment. Pub. Res. Code §§ 21100, 21151; 14 CCR §§ 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. An agency's "decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal. App. 4th 608, 609. Here, the undisputed evidence is that City Council Transportation Committee meetings on the proposed activity were abruptly suspended and the City's Department of Transportation (DOT) was instructed to implement "phase one" of the plan by the Mayor. In this instance, where the city has not prepared any environmental document, the "fair argument" standard applies. See Gentry v. City of Murrietta, (1995) 36 Cal. App. 4th 1359, 1399; Stanislaus Audobon Society, Inc. v. County of Stanislaus (1995) 33 Cal. App. 4th 150, 155; Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1992) 29 Cal. App. 4th 1597, 1602.

CEQA incorporates a "three-tiered process to ensure that public agencies inform their decisions with environmental considerations"; (1) preliminary review, (2) initial study, and (3) EIR. Davidon Homes v. City of San Jose (1997) 54 Cal. App. 4th 106, 112-13. The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity." 14 CCR §§15060, 15061; Davidon Homes, supra, 54 Cal.

App. 4th at 112. CEQA applies if the activity is a "project" under the statutory definition, unless the project is exempt. PRC §§ 21065, 21080.

Certain types of projects having no significant effect on the environment are categorically exempt from CEQA under 14 CCR § 15301. These include minor alterations of existing public facilities involving "negligible or no expansion of use". 14 CCR § 15301 (emphasis added). Examples include existing highways and streets. 14 CCR § 15301(c). "The key consideration is whether the project involves negligible or no expansion of an existing use." 14 CCR § 15301. Here the stated purpose of the activity is to "improve heavily traveled corridors of Olympic and Pico Boulevards". The first phase proposes to eliminate curbside parking and add a lane of traffic in each direction on Pico and Olympic during peak hours. In other words, the very purpose of the project is to expand the use of the existing streets. To claim that the project will not expand the current use and is therefore exempt, seems inconsistent with the stated purpose.

Furthermore, a categorical exemption "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." 14 CCR § 15300.2(c). Unless such effects are obvious, the agency must conduct an initial study, during which it must consult with other interested public agencies. 14 CCR §§15063(a),(c)(1),(g), 15365. Although there is no administrative record to examine, a public records request did not produce an initial study of the project. There is also a fair argument that the activity will have a significant impact on the physical environment of the community. See Chamber's Exhibit A, Exhibit C.

When a public agency decides that a project is exempt from CEQA and the agency determines to carry out the project, the agency may file a notice of exemption. 14 CCR § 15062(a). The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply. 14 CCR 15062(d). These petitions were timely filed. The court notes that a notice of exemption for a "revised Olympic West Pico East Initiative" was executed March 25, 2008. The copy submitted with the opposition does not indicate when the Notice was filed or posted. Although the "revised" project is not the subject of these petitions, the respondents can be guided by the court's comments on the appropriateness of the use of an exemption herein.

Courts have repeatedly affirmed that the fair argument standard is a low threshold test. League for Protection of Oaklands's Historic Resources v. City of Oakland (1997) 52 Cal. App. 4th 896. Accordingly, the petitions are granted. Petitioners have achieved their goal by these petitions. The City has, at least attempted to comply with CEQA by preparing a Notice of Exemption for the revised project. The petitions were no doubt instrumental in producing this desired result.

Evidentiary objections

Defendant's objections to the declarations submitted by the petitioners are overruled except for ¶¶ 4 and 5 of Butler's declaration. Extra-record evidence is barred. Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th 559, 573 fn 4 and 578. However, there is no administrative record in this case, since no hearing was held.