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From: BRC90049@aol.com

To: LADOT

Sent: 9/8/2011 10:44:23 A.M. Pacific Daylight Time

Subj: LADOT San Vicente Median Work Is Not Legal Under CEQA

Mr. Fisher and Mr. Gallagher:

It appears that LADOT has begun conduit work by digging into the historically designated San Vicente Coral Tree-lined Median. LADOT is improperly degrading the San Vicente Coral Tree Median without undertaking environmental review as required by CEQA. This is illegal. The San Vicente/Darlington Project, as described by LADOT, will require cutting into the Coral Tree Median, a designated Historic-Cultural Monument. We understand that LADOT is claiming that this project is exempt from CEQA. That is incorrect. The Project is not eligible for a CEQA exemption for two separate and independent reasons:

**1. Projects That May Have an Impact on Scenic Resources.** Categorical exemptions cannot be used for projects that “may result in damages to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources” within a designated official state highway . Pub. Resources Code, § 21084, subd.(b). The Coral Tree Median is a scenic resource under CEQA, which precludes any reliance on a categorical exemption.

**2. Projects That May Adversely Affect Historical Resources.** Categorical exemptions are improper for projects “that may cause a substantial adverse change in the significance of an historical resource.” Pub. Resources Code, § 21084, subd. (e). Locally designated historical resources, such as the Coral Tree Median, are presumed to be historically or culturally significant under CEQA, thereby precluding a lead agency from relying on a categorical exemption. CEQA Guidelines § 15064.5, subd. (a)(2).

The “scenic” and “historic” nature of the Coral Tree Median, and the necessity for environmental review, are further established under the San Vicente Scenic Corridor Specific Plan, which states: “The existing Coral Trees which line the median strip of San Vicente Boulevard shall be preserved and maintained with proper irrigation and pruning. . . . B. **Inasmuch as it is the purpose of this Plan to preserve, in perpetuity, the landscaped median strip of San Vicente Boulevard**, no major alteration of the median strip shall occur without a public hearing, to be held by the Board of Public Works, notification of which shall be posted along the right-of-way and published in a newspaper of local circulation at least 16 days prior to the hearing date.”

The scenic and historic status under CEQA is further demonstrated because “The City of Los Angeles has recognized and designated several street tree locations as worthy of Historic-Cultural Monument status. The Urban Forestry Division shares the City's commitment to preserving these trees. All of the Department of Public Works tree policies apply to these areas as well as some that are specific to the monument locations. The following special policies apply to all street tree locations designated as Historic-Cultural Monuments: notification of intent provided to the Historic-Cultural Monument Commission, and a public hearing held before the Board of Public Works for review and determination of the proposed removal request.”

[http://bss.lacity.org/UrbanForestryDivision/index\\_cultural.htm](http://bss.lacity.org/UrbanForestryDivision/index_cultural.htm) The Coral Tree Median is a “street tree locations designated as [a] Historic-Cultural Monuments,” specifically, Monument # 148.0.

**Environmental Review Must Occur Now, Not After Preparatory Work Is Begun.** It is therefore clear that environmental review is required under CEQA. We understand, however, that LADOT may be taking the position that, even if CEQA review is required, LADOT can begin the conduit work on the Project *before* conducting environmental review. That is incorrect.

Under CEQA, environmental review must occur at the outset of the Project, which means "as early as feasible in the planning process to enable environmental considerations to influence project program and design . . ." CEQA Guidelines § 15004, subd. (b). This standard requires environmental review at the point in the process "where genuine flexibility remains," not after the agency has effectively, if not officially, made a decision to proceed with the project. *Sundstrom v. Co. of Mendocino*, 202 Cal.App3d 296, 307 (1988).

Initiating work on a project before environmental review has commenced by doing conduit work necessary for the project is prohibited because that would subvert the purpose of CEQA-mandated review, which is to require environmental review before a project begins because, once work is performed on a project, formal project approval becomes inevitable: "[i]n environmental review] study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that have been repeatedly condemned in decisions construing CEQA. *Id.*

In short, LADOT's action, in beginning work on a Project that it has advised the community and CD-11 involves cutting into and narrowing the Coral Tree Median without environmental review, is a blatant violation of CEQA. By this email, we provide notice that LADOT's failure to cease and desist immediately would be in further violation of its obligations under State Law.

Brentwood Residents Coalition