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

FEDERATION OF HILLSIDE & CANYON)
ASSOCIATIONS, INC.,)

Petitioner,)

v.)

DIRECTOR OF PLANNING VINCENT P.)
BERTONI, LOS ANGELES DEPARTMENT)
OF CITY PLANNING, and CITY OF LOS)
ANGELES,)

Respondents.)

CASE NO.: 21STCP02043

**VERIFIED PETITION FOR WRIT OF
MANDATE**

Violations of Los Angeles City Charter §§
550, 553, 558; Violations of Los Angeles
Municipal Code §§ 11.5.3, 11.5.7, 16.50

INTRODUCTION

1. The Mulholland Scenic Parkway Specific Plan (“MSPSP” or “Specific Plan”) was adopted by the Los Angeles City Council in 1992. The Specific Plan protects approximately 20 square miles of the Santa Monica Mountains, a significant part of both the Santa Monica Mountains Conservancy Zone and Santa Monica Mountains National Recreation Area. The Specific Plan was adopted to regulate development within its boundaries to ensure the preservation of valuable scenic, recreational, educational, environmental, and other resources.

1 Protected environmental and ecological resources within the Specific Plan boundaries include
2 prominent ridges, streams, and environmentally sensitive areas, and the aquatic, biologic, and
3 topographic features therein.

4 2. The Mulholland Scenic Parkway Specific Plan Design Review Board (sometimes
5 “Mulholland DRB” or simply “DRB”) has advisory oversight over development projects within
6 the Specific Plan’s boundaries. Mulholland DRB Chair Alan Kishbaugh has described the
7 Specific Plan area as “a treasure of the City of Los Angeles.”

8 3. Joseph T. Edmiston, FAICP, Executive Director of the Santa Monica Mountains
9 Conservancy, stated at the Conservancy’s regular meeting on April 19, 2021: “The Mulholland
10 Design Review Board and the Mulholland Ordinance have really been singularly, I think,
11 responsible for the fact that we have preserved wildlife corridors. When the Mulholland
12 Ordinance was first adopted, it was assumed that there wasn’t any large megafauna, especially
13 of the mountain lion variety... And, of course, the lions were there... It’s really the only
14 effective tool that we have... If we lose that capacity, I think we’ve also lost a fundamental
15 approach to protecting the wildlife corridors as well.”

16 4. On March 30, 2021, Director of Planning Vincent Bertoni issued a memorandum
17 entitled “Mulholland Scenic Parkway Specific Plan Implementation Guidance” with the
18 subtopic heading “Review Process for Projects Not Visible From Mulholland Drive.” The
19 Director issued his memorandum with no advanced notice, even to the members of the
20 Mulholland DRB. If allowed to stand, the memorandum’s interpretation of Specific Plan
21 procedures would dramatically alter oversight of development projects within the plan area by
22 removing from the Mulholland DRB’s jurisdiction those projects deemed by the Department of
23 City Planning to be “Non-Visible” from the Mulholland Drive right-of-way.

24 5. The Director’s action is ultra vires, violating the City Charter and municipal code.

25 6. Neither the text of the Specific Plan nor the municipal code authorize the Director
26 to rewrite the Specific Plan to alter the Mulholland Design Review Board’s jurisdiction. The
27 Director’s action attempting to do so is in direct conflict not only with these regulations, but
28 also with the Los Angeles City Charter, which provides detailed procedures for the adoption,

1 amendment, or repeal of ordinances, orders, or resolutions concerning zoning and other land
2 use regulations, including specific plans. Under the City Charter, the Director has the authority
3 to *initiate* such legislation. But the legislative authority necessary to adopt, amend, or repeal
4 land use legislation such as a specific plan rests exclusively with the City Council.

5 7. Under the legislatively adopted Specific Plan text, all non-exempt cases must
6 receive design review by the Mulholland DRB. As Mulholland DRB Chair Alan Kishbaugh
7 noted at the April 19, 2021, Santa Monica Mountains Conservancy meeting: “If the City
8 Council had not wanted those [cases] to be heard they wouldn’t have established both an Inner
9 and an Outer Corridor.”

10 8. DIRECTOR OF PLANNING VINCENT P. BERTONI is the chief administrative
11 officer of the LOS ANGELES DEPARTMENT OF CITY PLANNING, the land use and
12 planning agency of the CITY OF LOS ANGELES. This petition by the FEDERATION OF
13 HILLSIDE & CANYON ASSOCIATIONS, INC. challenges the Director’s action which, in
14 effect, enacts a Specific Plan amendment. The Director has no authority to unilaterally amend
15 the Specific Plan. The Director, the Department of City Planning, and the City of Los Angeles
16 all have a mandatory duty to follow the City Charter.

17 9. The Director’s action to limit the express jurisdiction of the Mulholland DRB is
18 ultra vires and must be set aside.

19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction under Code of Civil Procedure section 1085.

21 11. This Court also has jurisdiction under Code of Civil Procedure section 1094.5.

22 12. Venue is proper in this Court under Code of Civil Procedure sections 393 and
23 394(a), because all Respondents are located and subject to service in Los Angeles County, the
24 Specific Plan which is the subject of the matter is located entirely in Los Angeles County, and
25 all of the acts or omissions alleged herein occurred in Los Angeles County.

26 **PARTIES**

27 13. The FEDERATION OF HILLSIDE & CANYON ASSOCIATIONS, INC. (the
28 “Hillside Federation” or the “Federation”) is a non-profit advocacy organization located in the

1 City of Los Angeles. Founded in 1952, its 45 member organizations and their constituents are
2 primarily located within the Santa Monica Mountains. Many member organizations are located
3 partly or entirely within the Mulholland Scenic Parkway Specific Plan area. The mission of the
4 Hillside Federation includes the protection of the property and quality of life of the residents of
5 the Santa Monica Mountains and other hillside areas of the City of Los Angeles, and the
6 encouragement and promotion of those policies and programs which will best preserve the
7 natural topography and wildlife of the mountains and hillsides for the benefit of all the people
8 of Los Angeles. The Hillside Federation also has a substantial interest in ensuring that City of
9 Los Angeles land use decisions are made in compliance with the City Charter, municipal code,
10 and other local land use regulations. The Hillside Federation sues on its own behalf and on
11 behalf of its members and the Los Angeles residents and other stakeholders who are adversely
12 affected and aggrieved by the acts, omissions, and decisions of the Respondents as alleged in
13 this petition. Additional information about the Hillside Federation is available at:

14 <https://www.hillsidefederation.org>.

15 14. Respondent DIRECTOR OF PLANNING VINCENT P. BERTONI (“Director”) is
16 the chief administrative officer of the City of Los Angeles Department of City Planning. The
17 Director is sued in his official capacity.

18 15. Respondent LOS ANGELES DEPARTMENT OF CITY PLANNING
19 (“Planning”) is the City of Los Angeles agency responsible for various land use and planning
20 matters and related activities, pursuant to the Los Angeles City Charter and municipal code.

21 16. Respondent CITY OF LOS ANGELES (“City”) is a California charter city located
22 in the County of Los Angeles, California. The Mulholland Scenic Parkway Specific Plan, at
23 issue in this action, is located wholly within the jurisdiction of the City of Los Angeles. The
24 City, acting through its elected governing body the City Council and other City agencies and
25 employees, has the ultimate legal responsibility for all acts, omissions, and decisions
26 complained of herein.

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1 **STATEMENT OF FACTS**

2 17. **The Mulholland Scenic Parkway Specific Plan.**

3 18. The Mulholland Scenic Parkway Specific Plan (“Specific Plan”) was adopted by
4 City of Los Angeles Ordinance 167,943 on May 13, 1992. Adoption of the Specific Plan
5 followed a two-decade effort to implement recommendations contained in a report issued by the
6 Citizens Advisory Committee on the Mulholland Scenic Parkway, which was adopted by the
7 City Council on March 26, 1973.

8 19. The Specific Plan is located in the Santa Monica Mountains. It spans five of the
9 City’s fifteen Council Districts (Districts 2, 3, 4, 5, and 11) and applies to approximately a 20-
10 square mile area of the City. On information and belief, the Specific Plan is part of six
11 Community Plan areas and one City-recognized Significant Ecological Area. It is also a
12 significant portion of the federally designated Santa Monica Mountains National Recreation
13 Area and the state designated Santa Monica Mountains Conservancy Zone. The Specific Plan
14 area includes numerous well-known scenic overlooks and state and City-owned parks. These
15 include Coldwater Canyon Park, Upper Franklin Canyon Reserve, Fryman Canyon Park,
16 Fryman Canyon Overlook, Laurel Canyon Park, and Runyon Canyon Park, among others.

17 20. The Specific Plan text lists its 14 purposes in Sections 2.A-N. While preserving the
18 visual aesthetic of the Mulholland Scenic Parkway is important, as reflected in Specific Plan
19 sections 2.A, 2.E, and 2.N, its purposes also include protecting numerous nonvisual
20 characteristics and resources within the plan area, including: preserving “land having
21 exceptional recreational and/or educational value,” assuring “that land uses are compatible with
22 the parkway environment,” minimizing grading and assuring “that graded slopes have a natural
23 appearance compatible with the characteristics of the Santa Monica Mountains,” preserving
24 “the natural topographic variation within the Inner and Outer Corridors,” reducing “the visual
25 intrusion caused by excessive lighting,” preserving “the existing ecological balance,” protecting
26 “prominent ridges, streams, and environmentally sensitive areas; and the aquatic, biologic,
27 geologic, and topographic features therein,” and protecting “all identified archaeological and
28 paleontological resources.”

1 21. The Specific Plan is divided into an Inner Corridor and Outer Corridor, each with
2 its own regulations (as found in Specific Plan text sections 5 and 6). The Inner Corridor is
3 defined as “[t]he Mulholland Scenic Parkway right-of-way plus the additional area which
4 extends 500 feet outwards from the outermost boundaries of the right-of-way” as designated on
5 official Scenic Plan maps. The Outer Corridor is defined as “[t]hat area which lies between the
6 Inner Corridor’s outermost boundary and one-half mile outward from the right-of-way,” as
7 designated on the same Scenic Plan maps.

8 22. While the Inner and Outer Corridor are regulated under separate sections of the
9 Specific Plan text, the same environmental regulations apply to both. Specific Plan section 6.B
10 states simply: “All the environmental protection measures required in the inner corridor are
11 required in the outer corridor.” Many of these regulations do not relate to whether a proposed
12 project is visible from Mulholland Drive. For example, projects and grading are not permitted
13 within 100 feet of a stream bank, or within 200 feet of the boundaries of public parkland, and
14 no oak tree may be removed without approval.

15 23. Under the Specific Plan, a Project is defined as “[t]he construction of any building
16 or structure, or the addition to, alteration, conversion, or change of use of any land, building or
17 structure on a lot located in whole or in part within the Specific Plan Area; or any construction,
18 alteration, conversion, or change of use of any building, structure or land in the right-of-way.
19 For purposes of this Specific Plan, the term project shall not include interior remodeling.”

20 24. The term “Visible Project” is defined as “[a] project on a lot which can be seen
21 with normal 20-20 vision from a location on Mulholland Drive anywhere within the lot’s
22 visibility arc.”¹ “Non-Visible Project” is not a defined term in the Specific Plan. The term
23 “Non-Visible” (whether hyphenated or capitalized) is not found within the Specific Plan text.

24 25. Specific Plan projects must receive a Project Permit Compliance entitlement under
25 municipal code section 11.5.7 subsection C, and a Design Review approval under municipal
26 code section 16.50 subsection E, unless they are within one of the limited exemptions found in

27
28 ¹ “Visibility Arc” is a defined term of the Specific Plan, but its definition is not relevant to the
instant action.

1 the Specific Plan text. Both approvals require an action by the Director, acting on a
2 recommendation of the Mulholland DRB.

3 26. The jurisdiction of the Mulholland Design Review Board is found in Specific Plan
4 section 11.A. The DRB’s jurisdiction does not depend on whether a proposed project is visible
5 or non-visible from the Mulholland Drive right-of-way or whether it is located in the Inner or
6 Outer Corridor. Section 11.A states:

7
8 No permit for the use of land; building permit; grading permit;
9 revocable permit to encroach; or B-permit; shall be issued for a
10 project, until plans, elevations and/or other graphic representations of
11 the project have been reviewed and approved by the Director acting
12 on a recommendation of the [Design Review] Board, except that
13 projects described in Sections 7, 8, and 9 . . . shall be reviewed and
14 approved in accordance with the provisions of Sections 7, 8, and 9 of
15 this Specific Plan; and utility related structures shall be reviewed and
16 approved in accordance with the provisions in Section 5 A 5 of this
17 Specific Plan. . .

18 27. Specific Plan sections 5.A.5 (approval of Utility Related Structures in the Inner
19 Corridor), 7 (approval of changes to Mulholland Drive and its right of way), 8 (approval of a
20 “Core Trail” within the plan area), and 9 (approval of major vista points) have slightly different
21 procedures for provision of the DRB’s advice, because in those sections of the Specific Plan the
22 ultimate approval authority lies not with the Director, but with either the City Planning
23 Commission or City Council.

24 28. Specific Plan section 11.A is wholly consistent with municipal code sections
25 11.5.7 and 16.50. Municipal code section 16.50, subdivision (D)(1)(b), echoes the Specific
26 Plan language, stating in relevant part: “No building permit shall be issued for any building or
27 structure regulated by a specific plan where design review is required, unless the Director has
28 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.*” (Emphasis added.)

29. There are two exemptions to the DRB’s jurisdiction for projects within the

1 Specific Plan area codified in Specific Plan Section 11.J. The exemption found in section
2 11.J.1(a) requires the Director to grant an exemption to the Design Review Procedures of the
3 Specific Plan if an “applicant is restoring a nonconforming building or structure pursuant to
4 Section 12.23.A.4 of the Los Angeles Municipal Code” (relating to moving non-conforming
5 buildings from one part of a lot within the Specific Plan area to another part of the same lot).
6 The exemption found in section 11.J.1(b) applies to remodel or repair projects where the total
7 cumulative floor area of any additions does not exceed 900 square feet and that conform to
8 other listed requirements. (These requirements relate to color, material, and design; building
9 height; whether a change of access to the Mulholland right-of-way is proposed; the project’s
10 location on or near a prominent ridge; and any proposed grading.)

11 30. In addition, under Specific Plan section 3.E, the Specific Plan simply does not
12 apply to “[c]orrective grading as determined by the Department of Building and Safety.” Under
13 the Specific Plan, even the Director of Planning has no oversight over such activity.

14 31. Under Specific Plan Section 11.L, the DRB’s jurisdiction also extends to review of
15 project changes made after a design review approval has been obtained: “no change shall be
16 made to any portion of a plan reviewed and approved by the Director, or City Planning
17 Commission, Area Planning Commission, or City Council, without additional review and
18 approval of the Director acting on a recommendation of the Board.”

19 32. Specific Plan section 11.F provides that the Mulholland DRB has not only the
20 authority, but also the *duty*, “to advise the Director on aspects of exterior design; site layout;
21 grading; driveway access; landscaping; and height, bulk, materials, textures and colors of any
22 building, structure, sign or other development of property or appurtenances or alterations
23 thereto after reviewing plans, elevations, and/or other graphic representations for a project to
24 assure compliance with the criteria set forth” in the Specific Plan.

25 33. Under the municipal code’s design review procedures found in municipal code
26 section 16.50, subsection E, subdivision (1)(b), a design review board’s mandatory final review
27 application is only deemed complete if the materials submitted for the board’s review includes
28 fourteen different categories of information, including: “(1) Drawings with finished details; [¶]

1 (2) Environmental review clearance; [¶] (3) Results of technical review, if required; [¶] (4)
2 Written narrative addressing specific plan design criteria and guidelines...; [¶] (5) Vicinity
3 map...; [¶] (6) Color photographs of the site and surrounding area...; [¶] (7) Site plan of
4 appropriate scale...; [¶] (8) Plans of appropriate scale...; [¶] (9) Elevations of appropriate
5 scale...;” etc.

6 34. No language found within either municipal code sections 11.5.7 (entitled “Specific
7 Plan Procedures”) or 16.50 (entitled “Design Review Board Procedures”) limits the jurisdiction
8 of the Mulholland Design Review Board.

9 35. **The Director’s Authority with Respect to Specific Plans.**

10 36. Los Angeles City Charter section 500 subdivision (b) establishes the City’s
11 Department of City Planning (“Planning”). Planning’s powers and duties are described in City
12 Charter section 550 et seq., as well as in certain municipal code sections.

13 37. The Director of Planning is “[t]he chief administrative officer of the City of Los
14 Angeles Department of City Planning.” Under City Charter section 553 subdivision (b), the
15 Director (or his or her designee) is charged with preparing the City’s proposed General Plan
16 and proposed amendments, preparing all proposed zoning and other land use regulations, and
17 investigating and acting on the design and improvement of proposed subdivisions of land and
18 acting as the City’s advisory agency under California’s Subdivision Map Act. City Charter
19 section 553 subdivision (b)(4) grants to the Director “those additional powers and duties
20 provided by ordinance.” The language of Charter section 553 is included in the definition for
21 “Director of Planning (Director)” found in municipal code section 12.03.

22 38. Charter section 558 has to do with procedures for the adoption, amendment, or
23 repeal of ordinances, orders, and resolutions regarding zoning, land use regulations, private
24 street regulations, public projects, and the City’s public spaces, such as rights of way,
25 playgrounds, airports, public buildings, and so forth. Subdivision (b)(1) of that Charter section
26 authorizes the Director to initiate a land use ordinance, order, or resolution. To be adopted,
27 however, such an ordinance, order, or resolution requires legislative action by the City Council
28 following a recommendation of the City Planning Commission. Charter section 558 subdivision

1 (a)(2) makes clear that legislative actions related to specific plans must follow this procedure.

2 39. The procedures for establishment, amendment, or repeal of land use legislative
3 actions are found in municipal code Chapter I, Article 2, section 12.32. Consistent with the City
4 Charter, this section of the municipal code authorizes the Director to initiate a land use
5 ordinance. Under municipal code section 11.5.7 subsection A, these procedures apply to
6 specific plans.

7 40. The City's specific plan procedures are found in Chapter I, Article 1.5, section
8 11.5.7 of the municipal code, except for design review board procedures, which are found in
9 municipal code Chapter I, Article 6.1, section 16.50. Under municipal code section 11.5.7
10 subdivision (B)(1), "Project Permit Compliance" is defined as a "decision by the Director that a
11 project complies with the regulations of the applicable specific plan, either as submitted or with
12 conditions imposed to achieve compliance."

13 41. The Director has authority under municipal code section 11.5.3 to interpret the
14 meaning of the General Plan and specific plans "in instances when there is a lack of clarity in
15 the meaning of those regulations, subject to appellate review." The authority of the Director
16 found in municipal code section 11.5.3 is included within the definition for the "Director of
17 Planning (Director)" found in municipal code section 12.03. Municipal code section 11.5.3
18 provides no details as to the appropriate appellate body to hear appeals of actions taken by the
19 Director under its authority, or a deadline within which an appeal under the section must be
20 submitted to the Department of City Planning or other City agency.

21 42. The Director has authority under municipal code section 11.5.7, subdivision (C)(1)
22 to determine what types of projects are exempt from Project Permit Compliance procedures, but
23 these determinations must be "based on exemption provisions and other regulations contained
24 in individual specific plans."

25 43. Municipal code section 11.5.7 subsection G relates to amendments to specific
26 plans and, consistent with Charter sections 555 and 558, references the procedures for adopting
27 land use legislation in municipal code section 12.32. Subsection G does not provide land use
28 legislative authority to the Director.

1 44. Municipal code section 11.5.7 subsection H is similar to section 11.5.3. It
2 authorizes the Director “to interpret specific plans when there is a lack of clarity in the meaning
3 of their regulations.” Subsection H does not specify who may apply to request such an
4 interpretation. It does, however, require an applicant to reference the specific plan regulation or
5 regulations for which clarification is requested and a description why the clarification is
6 necessary “for the project or subject property.” Following the Director’s issuance of a written
7 interpretation, appeals may be heard either by an Area Planning Commission or the City
8 Planning Commission, depending on whether the interpretation affects an entire specific plan
9 area or any of its subareas, or only a specific site. Appeals must be made within 15 days of the
10 date of mailing of the Director’s decision.

11 45. Chapter I, Article 6.1, section 16.50 of the municipal code (entitled “Design
12 Review Board Procedures”) relates to procedures for design review of specific plan areas. This
13 code section authorizes design review boards to make an optional preliminary design review, as
14 well as a final design review. A design review board’s authority and duty to advise the Director
15 on a design review application may be lost if the board fails to act on a design review
16 application within the required time period. Otherwise, nothing in municipal code section 16.50
17 permits the Director to act on a design review application without first considering the design
18 review board’s recommendation.

19 **46. The Director’s Action Altering the Mulholland DRB’s Jurisdiction.**

20 47. On or about March 30, 2021, the Director of Planning released a Memorandum
21 entitled “Mulholland Scenic Parkway Specific Plan Implementation Guidance” with the
22 subtopic heading “Review Process for Projects Not Visible From Mulholland Drive.” The
23 Memorandum’s stated purpose was “to supersede the 1998 Director of Planning’s
24 memorandum and to clarify Project Permit Compliance and Design Review Procedures for
25 Visible and Non-Visible Projects in the Mulholland Scenic Parkway Specific Plan area pursuant
26 to Los Angeles Municipal Code (LAMC) Section 11.5.7 and the Mulholland Scenic Parkway
27 Specific Plan.”

28 48. The Director’s Memorandum recounts the history and background of the

1 Mulholland Scenic Parkway Specific Plan from the Director’s perspective. The Memorandum
2 states that the “MSPSP is a product of its time, and local and state environmental regulations
3 have evolved over the past four decades.” It states that the California Environmental Quality
4 Act, passed in the early 1970s “has become a powerful tool for evaluating and disclosing
5 whether development can affect the environment,” and notes the 1980 establishment of the
6 Santa Monica Mountains Conservancy by California’s legislature. It notes that the Specific Plan
7 guidelines, established in 2003, were amended in 2009. It notes that the Specific Plan
8 regulations “have not been amended since the original adoption of the ordinance in 1992.”

9 49. Without reference to any particular Specific Plan language or other evidence, the
10 Memorandum asserts that “[a]mbiguities in the text of the MSPSP, combined with conflicting
11 or outdated regulations in an era of overlapping citywide and state-level regulations, create a
12 specific plan that is challenging to enforce and difficult for stakeholders to understand.” The
13 Memorandum continues by suggesting, without reference to Specific Plan language or other
14 evidence, that the Specific Plan’s design review procedures and scope were “broadened to
15 include non-visible projects,” as if such projects were never intended to be within the
16 jurisdiction of the DRB.

17 50. The Memorandum claims that certain Specific Plan language, a reference to only
18 one of the fourteen purposes listed in the Specific Plan, and other City regulations that
19 supersede the Specific Plan, combine to allow the Director to use his authority under municipal
20 code section 11.5.7, subdivision C.1, to interpret the Specific Plan such that the design review
21 procedures of the Specific Plan would no longer apply to “Non-Visible Projects.”

22 **51. Attempted Appeals of the Director’s Action.**

23 52. Hillside Federation members and officers learned of the Director’s action on or
24 about April 6, 2021. After reviewing the Director’s Memorandum, Hillside Federation members
25 concluded that the Director’s action was in excess of the Director’s authority under the City
26 Charter, municipal code, and Specific Plan. Aggrieved by the Director’s action, the Hillside
27 Federation determined it should appeal the Director’s interpretation of the Mulholland Scenic
28 Parkway Specific Plan to the City Planning Commission. Although Hillside Federation

1 members did not have immediate notice of the issuance of the Memorandum, Marian Dodge,
2 Chairperson of the Hillside Federation, filed an appeal to the Department of City Planning on or
3 about April 13, 2021, having only known of the Director's action for approximately one week.

4 53. The Hillside Federation's appeal generally alleged that the Memorandum violated
5 the Specific Plan, as well as Planning's Public Participation Policy. The Federation's appeal
6 expressed grave concern that the action set a dangerous precedent for unilateral changes to
7 specific plans by the Director and, because the Director had no authority to make such a change
8 unilaterally, constituted an abuse of discretion by the Director in overriding the City Council's
9 legislative action adopting the Specific Plan.

10 54. On or about April 14, 2021, Hillside Federation Chair, Marian Dodge, received an
11 email from a planning deputy in the office of City Councilmember Nithya Raman's office that
12 someone from Planning would be reaching out regarding the Hillside Federation's attempted
13 appeal of the Memorandum. According to the deputy, Planning had determined that the
14 Memorandum was not appealable.

15 55. On or about April 22, 2021, the Hillside Federation received an email notification
16 from Planning that the Department of City Planning had determined its appeal had been
17 rejected. In the email, Planning staff asserted that the document referenced in the appeal (the
18 Memorandum) was not appealable. The notification requested that someone should come to
19 Planning to retrieve the Hillside Federation's appeal submission.

20 56. Hillside Federation leadership became aware of several other attempted appeals
21 filed by others that were likewise summarily denied by Planning on the basis that the Director's
22 Memorandum was not appealable, including appeals filed by Hillside Federation member
23 organizations Bel Air Skycrest Property Owners' Association ("BASPOA") and Laurel Canyon
24 Association ("LCA").

25 57. BASPOA's appeal included similar allegations to the Hillside Federation's. It
26 alleged that changes made by the Memorandum required the City's legislative process to be
27 properly followed, and that the Memorandum misinterpreted the language of the Specific Plan.
28 It alleged that the Director usurped the City Council's legislative authority by failing to follow

1 the process required by the City Charter, and denied members of the public their right to
2 participate in that public process.

3 58. LCA's appeal likewise objected to the Director's action on the basis that it
4 effectively eliminated Outer Corridor projects from the Specific Plan's design review process,
5 suffered from a lack of transparency, set a dangerous precedent for modification of other
6 specific plans, and constituted an abuse of the Director's authority.

7 59. The Mountains Recreation and Conservation Authority ("MRCA"), a local public
8 agency exercising joint powers of the Santa Monica Mountains Conservancy and other
9 governmental agencies under Government Code section 6500 et seq., also filed an appeal to the
10 City Planning Commission. MRCA's appeal noted that the Director's action would impair
11 public notice and public participation rights in the bulk of Specific Plan cases and would "result
12 in the degradation of the scenic qualities, ecological capacity, and watershed health of the Santa
13 Monica Mountains." It also complained that no environmental review of the Director's action
14 had been performed prior to enactment of the new policy, and that Specific Plan language
15 protecting parklands and environmental protections had been ignored.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 **AND INADEQUATE REMEDIES AT LAW**

18 60. The Hillside Federation has fully exhausted its administrative remedies or is
19 excused from exhaustion because the City has no readily available administrative remedy. The
20 Federation and two of its member organizations attempted to appeal the Director's action by
21 timely filing appeals of the Director's action to the City Planning Commission. Appeal filings
22 were summarily rejected by the City, and the Federation and other appellants were told the
23 Director's action was not appealable. Administrative remedies are thus unavailable, inadequate,
24 or would be futile.

25 61. The Hillside Federation has no plain, speedy, or adequate remedy in the ordinary
26 course of law unless this Court grants the requested writ of mandate. In the absence of a
27 remedy, Respondents' action would result in a violation of law, in that the actions complained
28 of herein conflict with and therefore violate the City Charter, municipal code, and the

1 legislatively adopted text of the Mulholland Scenic Parkway Specific Plan.

2 **FIRST CAUSE OF ACTION**

3 **(VIOLATIONS OF LOS ANGELES CITY CHARTER)**

4 62. Petitioner incorporates all previous paragraphs as if fully set forth.

5 63. “A charter city may not act in conflict with its charter. [Citations.] Any act that is
6 violative of or not in compliance with the Charter is void.” (*Domar Electric, Inc. v. City of Los*
7 *Angeles* (1994) 9 Cal.4th 161, 171.)

8 64. **The Director’s Implementation Guidance Memorandum Violates City**
9 **Charter section 553.**

10 65. Los Angeles City Charter section 553 describes the duties and powers of the
11 Director of Planning. The Director possesses authority to initiate land use legislative actions,
12 but not to unilaterally pass land use legislative actions into law.

13 66. The jurisdiction of the Mulholland Design Review Board as described in the
14 Specific Plan is not ambiguous or lacking in clarity. The Mulholland DRB has jurisdiction over
15 all development projects within the Specific Plan area, except for those projects explicitly
16 exempted under the language of Specific Plan section 11.J, and except for corrective grading as
17 determined by the Department of Building and Safety, which is not subject to the provisions of
18 the Specific Plan.

19 67. The Director’s authority under municipal code section 11.5.3 permits the Director
20 to interpret specific plans only “in instances when there is a lack of clarity” in the meaning of a
21 specific plan, but in that case allows appellate review of the Director’s interpretation.

22 68. The Director’s authority under municipal code section 11.5.7 subsection H
23 similarly permits the Director to interpret specific plans where a specific plan’s meaning is
24 unclear, and likewise allows for appellate review of the Director’s interpretation.

25 69. Municipal code section 11.5.7 subdivision (C)(1) relates to Project Permit
26 Compliance, not design review, and in any event is limited by the exemption provisions and
27 other language found within the Specific Plan text. It does not authorize the Director to interpret
28 the specific plan so as to limit the Mulholland DRB’s advisory role.

1 70. The Director’s Memorandum nonetheless purports to remove the jurisdiction of
2 the Mulholland Design Review Board for projects deemed by the Department of City Planning
3 to be “Non-Visible” from Mulholland Drive under the authority of municipal code section
4 11.5.7 subdivision (C)(1). The Director has no authority to impose limitations on the
5 Mulholland DRB’s jurisdiction through an interpretation that conflicts with the clear and
6 unambiguous language of the Specific Plan and in conflict with the City’s relevant municipal
7 codes. The Director’s action issuing the Memorandum thus violates City Charter section 553.

8 **71. The Director’s Implementation Guidance Memorandum Violates City**
9 **Charter section 558.**

10 72. The requirements of Los Angeles City Charter section 558 apply to “the adoption,
11 amendment or repeal of ordinances, orders or resolutions . . . concerning . . . zoning or other
12 land use regulations concerning permissible uses, height, density, bulk, location or use of
13 buildings or structures, size of yards, open space, setbacks, building line requirements and other
14 similar requirements, including specific plan ordinances . . .”

15 73. The adoption, amendment, or repeal of ordinances, orders, or resolutions subject to
16 Charter section 558 may be *initiated* by the Director of Planning, but the adoption, amendment,
17 or repeal is only effective upon a legislative action of the City Council following the
18 recommendation of the City Planning Commission. The Director of Planning has no authority
19 to unilaterally adopt, amend, or repeal such ordinances, orders, or resolutions.

20 74. In adopting the Mulholland Scenic Parkway Specific Plan in 1992, the City
21 Council of the City of Los Angeles unambiguously established the design review jurisdiction of
22 the Mulholland Design Review Board to include review of all projects located within the
23 Specific Plan area except for those specifically exempted under the clear language of Specific
24 Plan section 11.J, and except for “corrective grading” as determined necessary by the
25 Department of Building and Safety.

26 75. Rather than initiating a land use ordinance under Charter section 558, as he is
27 entitled to do, the Director unilaterally issued an Implementation Guidance Memorandum to
28 impose a limitation on the jurisdiction of the Mulholland DRB in conflict with the

1 unambiguous text of the Specific Plan. Such an action improperly bypasses, and therefore
2 violates, the requirements of City Charter section 558.

3 **76. The Department of City Planning’s Summary Rejection of Appeals of the**
4 **Director’s Implementation Guidance Memorandum by the Hillside Federation and Its**
5 **Members Violated City Charter Section 550.**

6 77. The powers and duties of the Department of City Planning are described in City
7 Charter section 550 as including “all the powers and duties provided for it in the Charter or by
8 ordinance.” Under Charter section 550, Planning cannot ignore duties imposed on it by the
9 municipal code.

10 78. By its own language, the Director’s Implementation Guidance Memorandum is an
11 “interpretation” of the Mulholland Scenic Parkway Specific Plan.

12 79. Municipal code section 11.5.3 states that the Director’s interpretations of the
13 General Plan and specific plans are “subject to appellate review.” Similarly, Director’s
14 interpretations made under municipal code section 11.5.7 subsection H may be appealed.

15 80. Members of the Hillside Federation learned of the Director’s issuance of the
16 March 30, 2021 Implementation Guidance Memorandum on or about April 6, 2021. In response
17 to the Director’s action the Hillside Federation and two of its members organizations, Bel Air
18 Skycrest Property Owners’ Association and Laurel Canyon Association, each separately
19 submitted appeals of the Memorandum approximately one week later. The Hillside Federation’s
20 appeal of the Director’s action was summarily rejected without consideration.

21 81. The Department of City Planning has a duty to receive and process for hearing by
22 the City Planning Commission or another City of Los Angeles agency appeals of Director’s
23 interpretations, whether made under municipal code section 11.5.3 or under section 11.5.7
24 subsection H. Planning’s summary rejection of the Hillside Federation’s and its member’s
25 appeals ignored duties imposed on Planning under the municipal code and therefore violated
26 City Charter section 550.

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1 **SECOND CAUSE OF ACTION**

2 **(VIOLATIONS OF LOS ANGELES MUNICIPAL CODE)**

3 82. Petitioner incorporates all previous paragraphs as if fully set forth.

4 83. **The Director’s Implementation Guidance Memorandum Misinterprets and**
5 **Violates Los Angeles Municipal Code section 11.5.7.**

6 84. Municipal code section 11.5.7, subdivision (C)(1) authorizes the Director to
7 determine what types of projects are exempt from Project Permit Compliance procedures. Such
8 determinations must be “based on exemption provisions and other regulations contained in
9 individual specific plans.”

10 85. The Director’s Implementation Guidance Memorandum interprets municipal code
11 section 11.5.7 subdivision (C)(1) as providing the Director with authority to add additional
12 project exemptions beyond the two express exemptions found in Mulholland Scenic Parkway
13 Specific Plan section 11.J.

14 86. Municipal code section 11.5.7 subdivision (C)(1) relates not to design review, but
15 to Project Permit Compliance. The Director has no authority under this section to interpret
16 design review procedures, which are found primarily in municipal code section 16.50 and in
17 individual specific plans.

18 87. The Director’s misinterpretation violates municipal code section 11.5.7.

19 88. **The Director’s Implementation Guidance Memorandum Violates Los Angeles**
20 **Municipal Code section 16.50 and the Mulholland Scenic Parkway Specific Plan.**

21 89. Under municipal code section 16.50 subdivision (D)(1) and the Mulholland Scenic
22 Parkway Specific Plan section 11.F, the Mulholland Design Review Board has the authority
23 and duty to review all projects within the Specific Plan area, unless a project is exempt from
24 review under the express language of Specific Plan section 11.J. The Director may only act on a
25 project within the Specific Plan area following receipt of the Mulholland DRB’s
26 recommendation, unless the Board fails to act within the time limits specified in municipal code
27 section 16.50 subdivision (E)(3).

28 90. The Director’s Implementation Guidance Memorandum misinterprets municipal

1 code section 11.5.7 subdivision (C)(1), which relates to Project Permit Compliance and not
2 design review procedures, as authorizing the Director to add project exemptions beyond the two
3 express exemptions found in Mulholland Scenic Parkway Specific Plan section 11.J.

4 91. The Director’s misinterpretation violates the express authority of the Mulholland
5 Design Review Board under the Specific Plan text and under Municipal Code section 16.50
6 subdivision (D)(1).

7 92. **The Department of City Planning’s Summary Rejection of the Hillside**
8 **Federation’s Appeal of the Director’s Implementation Guidance Memorandum Violates**
9 **Municipal Code Section 11.5.3, or in the Alternative Violates Municipal Code Section**
10 **11.5.7 subsection H.**

11 93. Municipal code section 11.5.3 states that the Director’s interpretations of the
12 General Plan and specific plans are “subject to appellate review.”

13 94. Municipal code section 11.5.7 subsection H also permits appeal of Director’s
14 interpretations.

15 95. The Department of City Planning has a duty to receive and process for hearing by
16 the City Planning Commission or another City of Los Angeles agency appeals of Director’s
17 interpretations, whether made under municipal code section 11.5.3 or under section 11.5.7
18 subsection H.

19 96. Planning’s summary rejection of the Hillside Federation’s and its member’s
20 appeals on the basis that the Director’s interpretation of the Specific Plan was not appealable
21 ignored Planning’s duty under municipal code section 11.5.3 and therefore violated municipal
22 code section 11.5.3.

23 97. In the alternative, Planning’s summary rejection of the Hillside Federation’s and
24 its member’s appeals on the basis that the Director’s interpretation of the Specific Plan was not
25 appealable ignored Planning’s duty under municipal code section 11.5.7 subsection H and
26 therefore violated municipal code section 11.5.7 subsection H.

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1 **PRAYER FOR RELIEF**

2 In each of the respects enumerated above, Respondents have violated their ministerial
3 duties under law, abused their discretion, failed to proceed in the manner required by law, and
4 decided the matters complained of without the support of substantial evidence, and Petitioner
5 Hillside Federation has a clear and beneficial right to Respondents' performance. Accordingly,
6 Respondents' action through issuance of the Director of Planning's Memorandum to alter the
7 jurisdiction of the Mulholland Design Review Board must be set aside.

8 WHEREFORE, Petitioners pray for relief as follows:

9 1. For an alternative and peremptory writ of mandate, commanding Respondents to:

10 A. Set aside, rescind, and vacate the Director of Planning's Memorandum
11 entitled "Mulholland Scenic Parkway Specific Plan Implementation Guidance" issued on
12 or about March 30, 2021; and

13 B. Restore the Mulholland Design Review Board's jurisdiction to that required
14 by the Specific Plan text adopted by the City Council in City of Los Angeles Ordinance
15 167,943, adopted May 13, 1992, unless and until the City amends or repeals the
16 Mulholland Scenic Parkway Specific Plan through the City's Charter-mandated process
17 under Charter section 558 for the adoption, amendment, or repeal of zoning and land use
18 regulations, including specific plans; and

19 2. For costs of the suit; and

20 3. For reasonable attorneys' fees; and

21 4. For such other and further relief as the Court deems just and proper.

22
23 DATE: June 25, 2021

Respectfully Submitted,
LAW OFFICE OF JOHN P. GIVEN

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27 By: 

John Given
Attorney for Petitioners

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VERIFICATION

I, the undersigned, declare that I am a Petitioner in this action. I have read the foregoing Petition For Writ Of Mandate and know the contents thereof, and the same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of June, 2021, in Los Angeles, California.



Charley M. Mims
President, Federation of Hillside &
Canyon Associations, Inc.