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May 7, 2018

*By e-mail (edward.paek@lausd.net; CEQA-comments@lausd.net;
jefferson.crain@lausd.net); Original to follow*

Los Angeles Unified School District
Board of Education
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Board Secretariat
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Los Angeles, CA 90017

Edward Paek
CEQA Project Manager
Los Angeles Unified School District
Office of Environmental Health and Safety
333 South Beaudry Avenue, 21st Floor
Los Angeles, CA 90017

**Re: The Proposed Roosevelt High School Comprehensive Modernization
Project Violates CEQA**

Dear Honorable Board Members and Mr. Paek,

On behalf of the Los Angeles Conservancy (“the Conservancy”), the law firm of Chatten-Brown & Carstens submits these comments on the April 2018 Final Environmental Impact Report (“Final EIR”) for the Roosevelt High School Comprehensive Modernization Project. As set forth in the previous comment letters submitted by the Conservancy, the Conservancy has long recognized the historic significance of the rare collection of culturally significant buildings on the Project site, which, as a group, is eligible as a National Register historic district for its association with the nationally significant 1968 Chicano Walkout.

As detailed in this letter, the Project as proposed would violate the California Environmental Quality Act (“CEQA”) due to the Los Angeles Unified School District’s (“District”) pre-commitment to the Project prior to performing environmental review, the failure to recirculate the EIR after significant new information was added the EIR, and the District’s improper rejection of a viable preservation alternative.

While the proposal set forth in the EIR calls for the demolition of the contributors to the National Register-eligible historic district, the Conservancy urges a partial preservation approach to retain and renovate the R Building, a portion of this historical resource. Along with many other members of the community, the Conservancy urges the adoption of Alternative 2. A Los Angeles Times Op-Ed, written by Luis Hoyos, an architect, a professor of architecture at Cal Poly Pomona and a member of the Advisory Council on Historic Preservation, urges the preservation of Roosevelt’s historic R building and explains how this is feasible. (**Exhibit A**, *Roosevelt High School’s Historic R Building Should Be Preserved, Not Demolished*, Los Angeles Times, May 4, 2018.)

I. The District’s Entry Into a Contract with a Builder to Demolish the National Register-Eligible Historic District Buildings Prior to Commencing Environmental Review Constitutes a Pre-Commitment to the Proposed Project.

CEQA’s most fundamental requirement is that an EIR must be prepared and considered before a lead agency approves a project that may have a significant effect on the environment. (Pub. Resources Code §§ 21100, 21151; Cal. Code Regs. tit. 14 (hereinafter, “Guidelines”) § 15004.) “If post-approval environmental review were allowed, EIR’s would likely become nothing more than post hoc rationalizations to support action already taken.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.)

Public agencies are barred from “tak[ing] any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.” (Guidelines, § 15004, subd. (b)(2)(B).) The California Supreme Court addressed a similar improper commitment in a case successful brought by this firm. The Court found that in determining whether the agency has impermissibly pre-committed to the project, the critical question is “whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See [Guidelines], § 15126.6, subd. (e).)” (*Save Tara v. City of West Hollywood* (2008) 45

Cal.4th 116, 139.) While the development agreement at issue in the case was conditioned upon later environmental review, the Court found the specifics of the agreement and the preliminary funding provided by the City resulted in improper pre-commitment under CEQA. Similarly, the District has pre-committed itself in a manner that precludes alternatives under CEQA by entering into a contract for design and construction of the Project that included specific requirements for the design.

On or about August 22, 2017, the Board of Education entered into a \$144 million contract for the design and construction of the Roosevelt High School Comprehensive Modernization Project. The contract became effective on October 10, 2017. The contract states:

“The proposed project is located at Roosevelt High School and **will include**, but is not limited to the following:

Demolition of the following facilities:

- Auditorium and Classroom building
- Music building
- Industrial arts classroom building
- East classroom building
- Physical Education building
- Lunch shelter
- Auto service
- Maintenance and Operations building
- Approximately 22 classrooms and offices located in relocatable buildings
- Approximately 8 classrooms in modular buildings
- School-site utility building”

(Final EIR, Volume II, Appendix 10.0-11.2, Exhibit A, Redline of Design-Build Contract dated October 10, 2017 Between Los Angeles Unified School District and Swinerton Builders, p. 5, *emphasis added*.)

Then, on October 18, 2017, the District released the Initial Study and Notice of Preparation of a Draft EIR. In comments on the Draft EIR, numerous members of the public identified this pre-commitment violation.

Apparently, the District now attempts to cure this clear legal error by entering into an “Amended and Restated Contract” with the Design-Build company, signed by the District on April 27, 2018, eleven days before this Project will be considered for potential approval. This amended contract now adds language that the District has the

sole discretion to modify the project. The District's recent modification of the contract is a recognition and implicit acknowledgment that the previous contract was a commitment to the project. These belated revisions to the contract, approved after environmental review had nearly been completed, do not save the District from its pre-commitment violations.

The District's determination of a design, which would demolish all of the National Register-eligible historic district buildings, prior to beginning environmental review constitutes a pre-commitment to the proposed project. The Final EIR's own words support this conclusion. The Final EIR provides:

Under Alternative 2, Building 1 would remain in the middle of the Project site. Therefore, the preferred and optimal site plan as presented in the proposed Project would require significant reorganization.

(Final EIR, p. 10.0-18, emphasis added.) This analysis is not a basis upon which to reject the less impactful Alternative 2. Rather, it supports the conclusion that the District was, and remains, committed to a specific plan.

The Conservancy has been advised that construction is planned to start this summer. Additionally, the District has informed our client that construction drawings for the proposed project are currently being prepared – before the environmental review has been completed and the project has been approved. This is further evidence of the District's pre-commitment to the proposed project.

II. The Draft EIR Must Be Recirculated.

When a lead agency adds "significant new information" to an EIR after the public has reviewed the Draft EIR but before the agency certifies the EIR, the agency must pursue an additional round of consultation by recirculating the revised Draft EIR to the public. (Pub. Res. Code § 21092.1.) New information is "significant" if, as a result of the additional information, "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." (*Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 6 Cal. 4th 1112, 1129 (1993), CEQA Guidelines, Cal.Code Regs., tit. 14, § 15088.5, subd. (a).)

The actual disclosure of what Alternative 2 would entail is new information in the Final EIR that was not previously provided in the Draft EIR. This includes a detailed site plan for Alternative 2 which was requested by the Conservancy and members of the community. It was provided and discussed only at a private meeting with the

Conservancy on March 15 and as part of a presentation by the District at a small community meeting on March 17, 2018, convened by the Committee to Defend Roosevelt. Alternative 2 was only referenced and not discussed in any substantive detail at the District's February 21, 2018 public meeting where the Draft EIR was outlined to the community. The Final EIR included significantly more details and information, including cost, which the public should be given ample opportunity to comment upon in a recirculated Draft EIR.

According to the Draft EIR, in response to the Notice of Preparation, numerous questions were asked of the District regarding the cost of construction. (Draft EIR, p. 1.0-9.) The District responded, "These comments do not specifically relate to CEQA" (*ibid.*) and did not address them further. In fact, the issue of cost is barely referenced in the Draft EIR. In one of the few references to costs, the Draft EIR states, "The analysis of alternatives shall focus on alternatives 'which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of project objectives, or would be more costly.'" (Draft EIR, p. 4.0-1, *emphasis added*, quoting CEQA Guidelines Section 15126.6(e)(2).)

Yet, the Final EIR focused significantly on the issue of cost, using it as one of the principal reasons for excluding Alternative 2. For example, the Final EIR provided the following references to the significant cost impacts of Alternative 2:

- "When making the decision to pursue demolition and new construction rather than a seismic retrofit and rehabilitation in compliance with the SOI standards, many factors were considered. These include current standards for a 21st century learning environment, cost, schedule, and the technical details and feasibility associated with renovating Building 1. In comparison to other school modernization and retrofit projects, the seismic work required for Building 1 is more extensive due primarily to construction type ..." (Final EIR, p. 10.0-15, *emphasis added*.)
- "As described in the Draft EIR, if the District were to select Alternative 2, it would have very significant impacts in terms of cost, schedule, and building layout and functionality." (Final EIR, p. 10.0-16, *emphasis added*.)
- "Both the classroom building and the parking/playdeck combination would add substantially to the overall construction cost of the Project and the maintenance and operation cost upon completion." (*Ibid*, *emphasis added*.)

- The Final EIR contains a cost analysis section. In relevant part, it states that the cost to renovate schools is an important factor for a public agency like LAUSD to consider, the renovation would require at least two additional years of construction, and “Alternative 2 would increase the overall cost by an estimated \$39.8 million dollars more than current cost of \$173 million for the proposed Project.” (Final EIR, p. 10.0-18.)

Additionally, the Final EIR included an extremely detailed, 50-page report entitled “Alternative Seismic Analysis and Cost Estimates,” which contained an April 25, 2018 Construction Cost Study between the Proposed Project and Alternative 2. (Final EIR, Appendix 10.0-7.) This report was used to support the conclusion that the cost increase in pursuing Alternative 2 would be nearly \$40 million more than the proposed Project. When cost information is used to support the District’s conclusion that an alternative is not viable, the public must have an opportunity to meaningfully review and comment on this information. The District failed to do so here, and the EIR must be recirculated.

In addition to the District’s failure to give the public an opportunity to review and comment on its cost analysis, even assuming arguendo the District’s financial calculations are correct, the District’s rejection of Alternative 2 in part due to cost is a misapplication of financial infeasibility under CEQA. “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181, *emphasis added*.) “If the cost of renovation exceeds the cost of new construction, it is the magnitude of the difference that will determine the feasibility of this alternative.” (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal. App. 4th 587, 599.) The proposed project is approximately 77% of the cost of Alternative 2. While Alternative 2 is more expensive, the District failed to provide evidence that it is financially infeasible.

One of the Los Angeles Conservancy’s board members, Anna Jacobson, is a senior preconstruction manager and has reviewed the cost analysis included in the Final EIR. In her role, Ms. Jacobson has experience in all phases of preconstruction through the start of construction. She provides technical expertise and oversight in estimating and performs other preconstruction functions including proposal preparation and constructability reviews. Ms. Jacobson is responsible for directing and advising project staff including Estimators, Project Managers, and Project Engineers.

Ms. Jacobson, who is an expert in construction cost analysis, has reviewed Appendix 10.0-7, the Alternative Seismic Analysis and Cost Estimates, and provides the following comments and concerns regarding the District’s analysis and conclusions:

It appears to Ms. Jacobson that the stakeholders for the Project perceive a programmatic benefit to new construction versus seismic retrofit and have prepared a skewed cost analysis to support that position. The scope of work described for the seismic retrofit seems reasonable for a building of this age and type (with the exception of the foundation design, which is not useful without a geotechnical investigation). However, all the different estimates do not seem to correspond to one another. The Conceptual Cost Estimate on page 38 of Appendix 10.0-7 compares a retrofit to new construction and shows a \$20 million *savings* with a seismic retrofit, which for this project size makes sense. However, the next estimate, entitled “Roosevelt High Comprehensive Modernization Construction Cost Study between the 'PROPOSED PROJECT' and 'ALTERNATIVE 2' ” (while that estimate is not paginated, it appears on page 341 of the PDF), does not seem to consider the same scope of work. The following are the apparent discrepancies:

- Ms. Jacobson would have expected to see \$90 million for Line 2 (Proposed Project) (or \$67 million if adjusted for area) and \$70 million for Line 2a (Alternative 2) if the second estimate was reconciled with the first one. But, instead they are showing \$35 million and \$49 million, respectively. In other words, the retrofit became more expensive per square foot than the new construction between the first and second estimates.
- Line 2 shows 81,000 gross square feet (GSF) vs. Lines 2a, 2b, and 2c, which total 154,000 GSF, a delta of 73,000 GSF. If the additional new building in Line 2b is truly required to replace existing classrooms (which requires further explanation and analysis), the added square footage should not significantly exceed the difference between the existing building and the proposed new building, which is 28,000 GSF. Alternatively, if the 40,000 GSF of new “specialty” classrooms is a new requirement and not replacing existing, 28,000 GSF seems like a lot more building area being abandoned than could ever make sense.
- Line 6 is questionable. The comments state that the unit price has been adjusted to reflect a difference in area. This is improper estimating; the revised area should be shown in the quantity column. Furthermore, since the retrofit scheme has more building area, it probably has a larger footprint, which means that the cost for sitework in that scheme should be less, not more.
- Ms. Jacobson does not understand the comments related to Line 6a. If the program of the New Gymnasium Building is the same (indicated by equal

values in Line 1), why are five additional basketball courts required in the retrofit scheme?

- Line 10e is not clear. It seems to be related to Line 2b; the comment refers to the additional specialty classrooms. The implication is that these additional classrooms would not be required in the Proposed Project, but why would that be? Although the comment does not say this explicitly, it would make more sense if this cost is based on the schedule extension being claimed in Lines 12 and 13, although Ms. Jacobson questions that claim, as described below.
- A 24-month extension per Lines 12 and 13 is not a reasonable assumption. Ms. Jacobson did not see a construction schedule associated with the new construction scheme, but it certainly should not exceed 4 years, which would be a very conservative schedule. Even so, Ms. Jacobson states that a 50% increase to account for retrofit is unjustifiable based on the information provided.
- For Line 13, a construction management fee of \$4,000/day is excessive and not consistent with general construction practices. This value would not be unreasonable for compensable delay, but in this situation the added cost should be part of the original contract and should not exceed \$1,000/day.

III. The Draft EIR's Analysis of Alternatives Is Inadequate.

CEQA prohibits approval of projects with significant adverse environmental impacts if there are feasible alternatives or mitigation measures that would reduce or eliminate those impacts. (Pub. Resources Code § 21002; Guidelines § 15021(a)(2).) As proposed, the Project would result in a significant adverse historical resources impact.

The District concludes the preservation alternative, Alternative 2, is the environmentally superior alternative. (FEIR, p. 10.0-25.) Nonetheless, the District rejects this alternative on the basis that Alternative 2 does not meet a majority of project objectives. However, the project objectives are broadly written and subjective in order to lead to the conclusion that the project's objectives would not be achieved with Alternative 2. (Draft EIR, p. 4.0-23.)

The Draft EIR concludes that the objective of "replac[ing] buildings and infrastructure that have reached the end of their useful lives ... would not be achieved as the District has determined, based on review of available information and reports prepared by its experts and additional sources within this EIR, that Building 1 has reached the end of its useful life." (Draft EIR, p. 4.0-25.) The EIR fails to define what

constitutes the useful life for a building. Without an objective definition, any historic resource that requires a few upgrades could be demolished, which is clearly not the intent of CEQA. If all buildings that had “reached the end of [their] useful life”, as determined by a project proponent, were demolished and replaced, no buildings would ever be rehabilitated. This objective appears to have been included in order to justify the previously determined decision to proceed with the proposed Project.

However, the EIR recognizes that “Under Alternative 2, Building 1 would be rehabilitated.” (Draft EIR, p. 4.0-4.) The summary conclusion that “Building 1 has reached the end of its useful life” is belied by the EIR’s acknowledgment that Building 1 could be rehabilitated. To interpret this objective as requiring the demolition of Building 1 would result in improperly narrow project objectives. (*See, e.g., Pres. Action Council v. City of San Jose* (2006) 141 Cal. App. 4th 1336, 1355.)

The District also concludes, “Alternative 2 would not attain Objective #8 of the proposed Project.” (Final EIR, p. 10.0-23.) Objective #8 is to “[i]ncorporate opportunities into the campus site plan for future expansion of the currently undersized football, track, and baseball fields.” (*Ibid.*) However, the EIR concludes “it may be possible to accommodate the future expansion of the playfields by constructing a parking structure with a playdeck on top” at an additional cost of approximately \$3.2 million. (*Ibid.*) This cost was already included in the \$40 million differential between the proposed project and Alternative 2. So, Alternative 2 could attain this objective.

In its analysis of objectives, the Final EIR also provides significant new information regarding the construction period for Alternative 2. The Draft EIR states:

Construction of the Project is estimated to take place over approximately three years beginning in the summer of 2018 and continuing through the fall of 2022. Construction of [] [A]lternative [2] would be generally similar but may vary slightly depending on the renovation of Building 1 and any specialized aspects of the construction which could add to the construction timeline.

(Draft EIR, p. 4.0-20.) After stating in the Draft EIR that Alternative 2 would be similar in construction time, at approximately three years, the Final EIR makes a significant change and states:

Unforeseen conditions, materials testing, careful selective demolition, and additional construction phase, and constructing an elevated playdeck are estimated to require at least two additional years of construction.

(Final EIR, p. 10.0-25.) This is additional information that must be circulated to the public for review and comment. Moreover, the construction time for the future expansions of the play fields is not included in the proposed project's time frame. Therefore, this is not an apples-to-apples comparison.

The Final EIR's conclusion that Alternative 2 would "compromise campus security" by not having consolidated sports facilities (Final EIR, p. 10.0-24) is not supported by the requisite substantial evidence and is simply not credible. In light of how unpersuasive many of these arguments are, these objectives appear to have been developed for the purpose to justify the infeasibility of Alternative 2.

Conclusion

The District's decision to demolish all of the National Register-eligible historic district buildings and execution of a contract to do so prior to beginning environmental review constitutes a pre-commitment to the proposed project. In light of the District's reliance upon cost as a basis to reject Alternative 2 as infeasible, and the cost study it conducted after circulation of the Draft EIR, the EIR must be recirculated. Finally, since Alternative 2 would eliminate significant historical resource impacts by rehabilitating Building 1 and the EIR improperly rejected all other identified alternatives, the Conservancy urges the District to recommend the selection of Alternative 2.

Pursuant to Public Resources Code section 21092.2, we request all notifications regarding this Project.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Chatten-Brown". The signature is stylized and written in a cursive-like font.

Josh Chatten-Brown

EXHIBIT A

FOOD BOWL | It's back! May 1-31

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OP-ED OP-ED OPINION

Roosevelt High School's historic R Building should be preserved, not demolished

By LUIS HOYOS MAY 04, 2018 | 4:05 AM



Roosevelt High School on Feb. 23, 2012. (Los Angeles Times)



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Beginning on March 1, 1968, thousands of students walked out of five predominantly Latino high schools on the Eastside of Los Angeles. The students were protesting substandard facilities, a lack of books recognizing Latino culture, overcrowding and the decidedly racist attitudes of administrators and teaching staff, among other issues. The East L.A. Blowouts, as the protests came to be known, lasted for a week, growing to include some 15,000 students across seven schools.

At Roosevelt High School in Boyle Heights, alarmed administrators locked the school gates to prevent students from leaving, and Los Angeles Police Department squad cars surrounded the campus, to no avail. The primary setting for Blowout activities on the Roosevelt campus — the site of both a student sit-in and an assembly held by Los Angeles Unified School District officials — was the school's original auditorium and classroom building, commonly known as the R Building.

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4:00 AM

NATION

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2h

AUTOS

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1h

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6:50 AM

POLITICS

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The R Building, built in 1922, is one of 12 structures that make up a historic district. Because of the Blowouts, this district has been determined to be eligible for listing in the National Register of Historic Places. Nevertheless, two months after the 50th anniversary of the Blowouts, L.A. Unified will soon vote to demolish the R Building, along with Roosevelt's gymnasium and other buildings on the campus.

parents illegally crossing the border under new Trump administration policy
4h

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The decision comes as part of a proposed plan to modernize the campus. The Roosevelt High School Comprehensive Modernization Project will undertake some \$173 million in upgrades, including critical seismic and accessibility improvements. It will also raze everything of historical significance. L.A. Unified will seal Roosevelt's fate on May 8, when it votes to certify the project's final environmental impact report.



There is no question that Roosevelt's students need and deserve the safest and highest quality facilities possible. Roosevelt High School should be modernized. But renovation need not come at the expense of historic preservation.

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There are clear, if unspoken, racial and cultural criteria for what gets deemed worthy of historic significance in this United States.

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There are clear, if unspoken, racial and cultural criteria for what gets deemed worthy of historic significance in this United States. Most of the sites that are included in the National Register of Historic Places and in the National Historic Landmarks Program recognize the accomplishments and experiences of white Americans. According to the National Park Service, which oversees both the register of historic places and the landmarks program, fewer than 5% of these protected sites are related to the histories of nonwhite communities, an imbalance the Obama administration fought to correct.

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Starting in 2010, the National Park Service began a series of studies on unrepresented communities. As a result of this research, the park service's landmarks committee identified many new sites as eligible for national historic landmark status — the highest recognition.

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I played a small part in the Latino study. As part of the review, many Los Angeles neighborhoods were surveyed. The five East Los Angeles schools where the Blowouts began were deemed eligible for landmark status — for their architectural merits, yes, but primarily for the role they played in the social and political history of the city. Both the State Office of Historic Preservation and L.A.'s Office of Historic Resources have also identified the schools as historically significant.

Roosevelt High School's R Building should be preserved, and there is no question that it can be done. L.A. Unified maintains that the building's configuration of classrooms no longer meets educational standards. That may be true, but demolition is far from the only option.

We could try building adaptation, an accepted practice worldwide in which partial preservation is combined with new construction. The Roosevelt campus encompasses more than 22 acres; this abundance of land affords flexibility. Surely L.A. Unified can come up with an alternative plan to preserve Roosevelt's history while also upgrading its buildings — something the district has managed to do at other historic campuses, including John Burroughs Middle School in Hancock Park and San Pedro High School in San Pedro.

Schools have been flash points in some of the most important events in American history. Before Brown vs. Board of Education in 1954, there was Mendez vs. Westminster School District of Orange County, which in 1947 laid the groundwork for school desegregation throughout California. The five schools that sparked the East L.A. Blowouts are witnesses to a history that should not be erased. L.A. Unified needs to find the will to revitalize and preserve Roosevelt High School's R Building while it still can.

Luis Hoyos is an architect, a professor of architecture at Cal Poly Pomona and a member of the Advisory Council on Historic Preservation.

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