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## **VIA ELECTRONIC MAIL**

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### **Re: Supplemental CEQA Objection Letter with Regard to Protected Tree Removal Case BPW-2019-0508, located at 10034 Westwanda Drive; CF 18-0916**

Dear Honorable City Council Members:

This firm represents Friends of Westwanda Drive ("Association") with respect to the City of Los Angeles's ("City") consideration of the proposed tree removal located 10034 Westwanda Drive in Benedict Canton (the "Project"). On or about August 31, 2018 and August 7, 2019 this office submitted an appeal of the environmental determination for Project under the California Environmental Quality Act ("CEQA"). This letter is intended to supplement those letters. And to provide links to reference materials that support Association's contention that the Project is not exempt from CEQA.

The City has argued in the Staff Report that the Project is exempt from CEQA. However, both unusual circumstances and loss of habitat for rare, threatened or endangered species removes the applicability of a CEQA exemption for the Project. Notably, a Class 32 exemption cannot be used if a project site has "value as *habitat* for endangered, rare or threatened species." The Coast Live Oak-California Walnut woodland is a sensitive species on the 2018 California Natural Community List from the California Department of Fish and Wildlife. Loss of area of a sensitive natural community constitutes a significant impact that is not mitigated by application of the City's Protected Tree Ordinance (e.g. planting new trees). The City admits this in the published CEQA Thresholds Guide. Further, the Southern California Black Walnut is threatened and the City has proposed no mitigation for the walnuts that have sprouted back to life as a result of the rains received during the winter.

CEQA Guidelines Section 15380(b)(2) provide a definition for “endangered, rare or threatened species: A species is rare when either: (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in the Federal Endangered Species Act.” Guidelines, § 15380. In simple terms, “threatened species” are likely to be at the brink in the near future.

Guidelines, § 15380(c) provide that a “species of animal or plant shall be presumed to be endangered, rare or threatened, if it is listed in the California Code of Regulations or Federal Regulations (14 Cal. Code Regs. § 670.2 or 50 Code Fed. Regs. § 17.12). However, even if a species is not listed on either of these lists, it shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b). (Guidelines, § 15380(d).)

There is ample evidence that the Southern California Black Walnut meets the required criteria. Many reference articles have been authored regarding the species’ special status. One referenced article is the United States Department of Agriculture’s Index of Species Information (“Index”). It can be accessed at

<https://www.fs.fed.us/database/feis/plants/tree/jugcal/all.html>. The Index notes that the species does not have a federal status, but states under “Other Status” the following: “Southern California walnut woodland is severely threatened by urbanization. The Nature Conservancy, in cooperation with the state of California, is giving high priority to acquiring vegetative/habitat data on the woodland. They list it as one of California’s rare and imperiled natural communities.” The Index contains 38 reference articles, many of which are scientific and scholarly articles regarding the status of the Southern California Black Walnut. The Association has uploaded several of these articles to DropBox for the City to download at <https://www.dropbox.com/sh/7ebzz2fuyg5qqqw/AAAE0xMC8PG4dlulohaiEmh1a?dl=0>

The following excerpts are from three of these articles:

“Due to urban sprawl much of the California black walnut woodland has been destroyed or is threatened, and it is considered to be one of California’s rare and imperiled natural communities. (Jones & Stokes Associates 1987).”

Keeley, Jon E. 1990. Demographic structure of California black walnut (*Juglans californica*: Juglandaceae) woodlands in southern California. *Madrono*. 37(4): 237–248. (available via Dropbox link provided)

“California walnut woodlands have been seriously diminished by developments in southern California. Many scientists consider it an endangered community. However, the species itself does not have endangered classification and accordant protection.”

Mullahy, D.P. 1992. Distribution and environmental relations of California black walnut (*Juglans californica*) in the eastern Santa Susana Mountains, Los Angeles County. *Crossosoma* 8:1–18. (available via Dropbox link provided)

“There are 2 problems to be addressed concerning management of California walnut woodlands; 1. The outright disappearance of the community in the face of rapid urbanization, and 2. reversal of ecological changes within the community due to overgrazing, increased fire frequency, and introduced species of understory plants. The first problem is the most important and urgent; if it is not dealt with, the second problem is moot. . . . It is important to recognize that California walnuts are rapidly approaching the status of a custodial species, which I define as a species with remnant natural populations found only within reserves of limited size, where protection of the population is an explicit management goal. Free ranging herds of American bison (*Bison bison*) in natural parks are an example of a custodial species. ”

Quinn, Ronald D. 1990. The status of walnut forests and woodlands (*Juglans californica*) in southern California. In: Schoenherr, Allan A., ed. Endangered plant communities of southern California (available via Dropbox link provided)

Further, the California Department of Fish and Wildlife (“CDFG”) has published a “Special Plants List” and has included the Southern California Black Walnut on that list. **See California Department of Fish and Wildlife California Natural Diversity Database (CNDDDB).**

The walnut is listed on page 76 of the Special Plants List with a global ranking of G3 and state ranking of S3, along with having a California Rare Plant Rank (CRPR) of 4.2. G3 means globally Vulnerable—At moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors. S3 follows the same definition of Vulnerable but for California alone. Id. CRPR 4 means Limited Distribution / Watchlist, and the .2 (of 4.2) means moderately threatened, with 20–80% of its occurrences threatened.

Even the California Department of Transportation (Caltrans) has acknowledged that the Southern California Black Walnut should be considered under CEQA. In a Supplemental EIR conducted in 2016 for a highway project in Southern California, Caltrans stated the following:

Southern California black walnut (California walnut or California Black walnut) is not federally and/or State-listed and has no official status. However, California black walnut merits consideration under CEQA because of the relatively limited distribution of California walnut woodland, and it is a CNPS CRPR 4 species (plants of limited distribution). California walnut is only found in Southern California. Recent construction has removed this habitat in many areas, and its future is uncertain.”

Caltrans SR-241/SR-91Tolled Express Lanes Connector Project Draft Supplemental Environmental Impact Report (October 2016); Excerpt from Chapter 3. (available via Dropbox link provided)

Moreover, the City of Los Angeles conducted an Environmental Impact Report (“EIR”) in 2017 for a proposed project at Harvard Westlake. The issue of whether or not the Southern California Black Walnut should be considered under CEQA as a “rare” species was a major issue. The City conceded the issue that the species was “rare” and stated the following:

## **“WALNUT WOODLAND HABITAT VALUE**

Southern California Black Walnut Woodlands are a relatively rare habitat type that has a range limited to the coastal slope of the California coast and transverse ranges from central Santa Barbara County in the north to Central San Diego County in the south (Sawyer, J. 1995; Barbour, m. 1977; Anderson, E. 2002). Though this range encompasses most of coastal southern California, the distribution of the southern California black walnut is limited largely to north facing slopes and some deep canyons where conditions are relatively moist compared to more exposed slopes and flats.”

City of Los Angeles Final Environmental Impact Report for Harvard-Westlake School Parking, Safety, and Athletic Plan (June 2017); Appendix D.4 Update to Biological Resources Report. (available via Dropbox link provided)

In addition, Exhibit C-7 in the City’s Threshold Guidelines lists Walnut Forests and California Walnut Woodlands as the two top priority plant communities in the City.

There should be no question that the project site has “value” as “habitat” for this endangered, threatened or rare species. Further, the City’s own CEQA Threshold Guide confirms this proposed project is located in an area of the City that was mapped and shaded as open space in the City’s CEQA Threshold Guide. The Guide states that for areas that are located within a shaded open space area (as identified on Exhibits C-2 through C-5) certain questions must be asked, two of which would be answerable in the affirmative in this case. The Guide states that in such a case, “further study in an expanded Initial Study, Negative Declaration, Mitigated Negative Declaration or EIR may be required.

For purposes of determining whether the Project meets the requirements of the Class 32 exemption, the court is not tasked with deciding whether or not the impacts of the removals are significant – the question is whether or not the project site has “value as habitat.” Clearly it does as evidenced by the presence of this species on the property and their excellent condition.

The City claims that because the developer intends to plant replacement oak trees on the property that this eliminates any environmental impacts associated with the Project. Again, this is irrelevant to the determination of whether or not the “project site has value as habitat for rare, threatened or endangered species.” The proposed project’s building footprint will forever remove habitat – the planting of saplings does not change that. Put another way, the replacement of individual trees does not negate the loss of habitat. Again, the City admitted loss of habitat was a potential environmental issue when it prepared the EIR for the proposed Harvard Westlake project in 2017. The City stated the following:

## **“OAK AND WALNUT WOODLAND IMPACT SIGNIFICANCE AFTER MITIGATION**

While the impacts to oak and walnut trees are to be mitigated in accordance with the Tree Ordinance, and thus by definition mitigated to a less than significant level by the City’s standards, the replacement of individual trees does not immediately mitigate the loss of habitat. Oak and walnut woodlands are considered sensitive regionally and even at the statewide level. The loss of these habitats is already considered significant regionally and

statewide. As discussed below, the loss of oak-walnut woodland onsite is considered to be a cumulatively considerable contribution to a significant impact with respect to loss of this resource.” (available via Dropbox link provided)

Further, the Association highlights the CEQA Guidelines statement that the Class 32 exemption is designed for “environmentally benign” in-fill projects. CEQA Guidelines Section 15332. This is not the type of “environmentally benign” project envisioned by the California Legislature. Finally, the City fails to acknowledge the 2006 Planning Commission Staff Report and Findings were formally adopted by the City Council for the City of Los Angeles in connection with the enactment of the Protected Tree Ordinance. This is not just a lone staff person that drafted a report – it was a legislative finding.

There are protected Southern California Black Walnut trees on the project site. The Southern California Black Walnut (whose scientific name is *Juglans c. v. californica*) meets the definition of a threatened or rare species outlined in § 15380(b) of the CEQA Guidelines because it limited range and threat by development activity. In fact, the International Union for the Conservation of Nature (“IUCN”) has listed the tree as “Vulnerable” within the “Threatened” category in terms of its conservation status, with “development” identified as a primary threat.

The City’s own CEQA Thresholds Guide acknowledges that the native tree should “be evaluated for consideration during preparation of environmental documents relating to CEQA.” The Staff Report prepared for the Protected Tree Ordinance states that the “Southern California Black Walnut . . . is listed as a species of concern whose existence on a project should be considered under the California Environmental Quality Act.”. Based on the IUCN designation, the City’s statements regarding its ‘locally significant’ tree in their own CEQA Thresholds Guide, and the City’s designation of the tree as “protected,” the Southern California Black Walnut meets the definition of a threatened or rare species outlined in § 15380(b) of the CEQA Guidelines.

A variety of scientific articles and encyclopedic entries support the Association’s position that the Southern California Black Walnut is a threatened species. Those articles can be accessed at the following links:

<https://www.dropbox.com/sh/7ebzz2fuyg5qqqw/AAAE0xMC8PG4dlu1ohaiEmh1a?dl=0>.

Moreover, other Environmental Impact Reports, including those by conducted by the City, have admitted that replacing individual trees does not mitigate for loss of habitat. Again, those documents can be accessed at [here](#). In sum, the Southern California Black Walnut meets the criteria for being adding to the official list of threatened species.

Finally, for reference purposes the City’s Conservation Element can be found at <https://planning.lacity.org/cwd/gnlpln/consvelt.pdf>. Further, the case file for the amended Protected Tree Ordinance can be found at <http://clkrep.lacity.org/online/docs/2003/03-1459.PDF>.

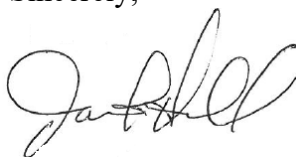
### **The Project is Not Consistent with All Applicable General Plan Policies**

The Class 32 exemption is reserved for certain types of “environmentally benign” infill projects. In order to qualify for a Class 32 exemption, a Project must be “consistent with the

applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.” Guidelines, § 15332(a). As outlined above, the City’s 2006 Protected Tree Ordinance “implements” Policy 3 of Section 6: Endangered Species of the Conservation Element of the General Plan by revising regulations concerning endangered species; and Policy 4 of Section 12: Habitats of the Conservation Element of the General Plan by creating legislation that encourages and facilitates protection of local native plant and animal habitats.<sup>1</sup> The Project is not consistent with *all* applicable general plan policies because it does not comply with the City’s Protected Tree Ordinance – which prohibits removal of Southern California Black Walnuts.<sup>2</sup> Here, the applicant will need to obtain a tree removal permit – a discretionary permit that requires a finding by the Board of Public Works that it is “necessary to remove the protected tree because its continued existence at the location prevents the reasonable development of the subject property.” This is simply not an environmental benign” project that is consistent with all applicable general plan policies. There is no substantial evidence to support the required finding that the Project is consistent all applicable general plan policies.

For the reasons outlined above, the CEQA Appeal should be granted.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jamie T. Hall', written in a cursive style.

Jamie T. Hall

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<sup>1</sup> The Conservation Element clearly lays out the rationale for regulation and protection: “Without protection of habitats suitable for species propagation, entire species of native plants and animals gradually will decline or become extinct. A couple of hundred plants and animals that live in Los Angeles habitats are listed on the federal and/or state endangered, threatened or species of special concern lists. Within the Santa Monica Mountains National Recreation Area alone 26 plants and animals are classified as rare, threatened or endangered and 58 more have been placed on the list of species of special concern by the National Park Service. Within the city more than 180 plant and animal species are listed by the Environmental Affairs Department for the city as a whole.”

<sup>2</sup> The Ordinance is codified in the Municipal Code and clearly states that “[n]o person shall relocate or remove any protected tree . . . without first having applied for and obtained a permit from the Board of Public Works or its designated officer or employee . . .”

