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August 7, 2019

VIA ELECTRONIC MAIL

City of Los Angeles
Public Works and Gang Reduction Committee
200 N. Spring Street, Room 361
Los Angeles, CA 90012-4801
fernando.campos@lacity.org

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 Committee 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 this office submitted an appeal of the environmental determination for Project under the California Environmental Quality Act ("CEQA"). This letter is intended to supplement that initial letter.

I. Fair Argument Standard of Review is Applicable

As noted in the prior letter, the Notice of Exemption ("NOE") issued by the City asserts that the Project is categorically exempt from CEQA under Article III, Section 1, Class 3, Category 1 (new construction of small structures – single family residences not in conjunction with the building of two or more units). However, the Project is not eligible for the "single family home" exemption because of its location in the Santa Monica Mountain Zone ("Zone"). The Legislature has declared that the Zone is an environmental resource of critical concern. The Zone was established by the Legislature via the Santa Monica Mountains Conservancy Act, which is codified at Section 33001 of the Public Resources Code. Under these circumstances (where a project may impact on an environmental resource of critical concern) a party need only demonstrate a "fair argument" that a project may have significant effect on the environment. This standard of review was recently outlined in *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880. The court stated that once it is determined that a project is located in an environmentally sensitive area the "fair argument" standard of review applies.

Berkeley Hills Watershed Coalition v. City of Berkeley (2019) 31 Cal.App.5th 880, 890. As explained in the prior letter submitted to the Board, there should be no doubt that the Santa Monica Mountains Zone comprises an environmental resource of critical concern. As noted in *Berkeley Hills Watershed Coalition*¹, a “resource” is a “natural source of wealth or revenue,” or a “natural feature or phenomenon that enhances the quality of human life.” *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 891. The Legislature’s explicit findings regarding the characteristics of the Zone in the Santa Monica Mountains Conservancy Act more than meets this definitional requirement. The City has asserted in the Staff Report that the Zone is not an “environmental resource of critical concern” and is not “precisely mapped.” This is simply not correct. The Santa Monica Mountains Conservancy (“SMMC” or “Conservancy”), a state agency, disputes this and supports Appellant’s contention that the Zone is an environmental resource of critical concern. The Conservancy also contends that the Zone is precisely mapped. The Conservancy is owed great deference with regard to these questions. As if that wasn’t enough, the City has produced their own maps in the CEQA Thresholds Guide² outlining Biological Resource Areas in the City. The project is within a mapped Biological Resource Area. Further, the City recently commissioned maps for the Wildlife Pilot Study³ and the project is located within the Pilot Study area. There is no merit to the argument in the Staff Report that the project is not located in an area determined to be an “environmental resource of critical concern” or that those areas are not “precisely mapped.”

An objector need only demonstrate a “fair argument” that the project “may impact” the mapped resource. *Id.* at 894. Stated another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an Environmental Impact Report (“EIR”) even though it may also be presented with other substantial evidence that the project will not have a significant effect. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. Again, under the “fair argument” standard an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Friends of “B” St. v. City of Haywood* (1980) 106 Cal.App.3d 988, 1002. This standard sets a “low threshold” for preparation of an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

II. The Project Will Have a Significant Effect on the Environment

Appellant has commissioned an expert report that detail why the Project will have significant effects on the environment – notably, impacts on biological resources. See **Exhibit 1**. The City’s existing Regulatory Compliance Measures (“RCMs”) do not reduce these impacts to a level of insignificance. In fact, the City does not even have Regulatory Compliance Measures that address many of the impacts outlined in the attached report. Notably, the expert concluded that the loss of habitat of a sensitive natural community constitutes a significant impact that is not mitigated by application of the City’s Protected Tree Ordinance.

¹ The court cited Merriam-Webster’s Collegiate Dict. (11th ed. 2014) p. 1061.

² See <http://planning.lacity.org/Documents/MajorProjects/CEQAThresholdsGuide.pdf>

³ See <https://planning.lacity.org/Documents/Citywide/WildlifePilotStudy/StudyBoards.pdf>

This report not only meets the “fair argument” standard (which again, sets a “low threshold”), but demonstrates the Project will have a significant effect on the environment.

The authors of the expert report are well qualified. Dr. Travis Longcore and Catherine Rich are principals of Land Protection Partners. Dr. Longcore is Associate Adjunct Professor in the Institute of the Environment and Sustainability at UCLA. Catherine Rich is Executive Officer of The Urban Wildlands Group. She holds an A.B. with honors from the University of California, Berkeley, a J.D. from the UCLA School of Law, and an M.A. in Geography from UCLA.

III. Class 32 Exemption Not Applicable

The City has argued in the Staff Report that the Project is also subject to the Class 32 exemption. However, both unusual circumstances and loss of habitat for rare, threatened or endangered species removes the applicability of this exemption. The expert report attached as **Exhibit 1** demonstrates unusual circumstances that prevent the City from deeming this project exempt from CEQA as a Class 32 Project. Further, the Class 32 exemption cannot be used because the Project 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). 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. The Southern California Black Walnut meets the criteria for being adding to the official list of threatened species.

IV. Conclusion

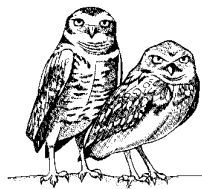
For the reasons outlined above, the CEQA Appeal should be granted.

Sincerely,

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

Jamie T. Hall

Exhibit 1



Land Protection Partners

P.O. Box 24020, Los Angeles, CA 90024-0020
Telephone: (310) 247-9719

August 2, 2019

Honorable Los Angeles City Council
Attn: Public Works and Gang Reduction Committee
200 North Spring Street, Room 395
Los Angeles, CA 90012

**Re: California Environmental Quality Act Appeal of a Tree Removal Permit Issued for
10034 Westwanda Drive**

Honorable Councilmembers:

The Board of Public Works has found that a proposed single-family residence at 10034 Westwanda Drive is eligible for a Class 3 exemption from review under the California Environmental Quality Act. The evaluation of the circumstances surrounding the proposed project by City staff and considered by the Board of Public Works did not, however, recognize that the vegetation type on the property, Coast Live Oak–California Walnut woodland, is a sensitive natural community. This plant association was identified as sensitive in the updated 2018 California Natural Community List from the California Department of Fish and Wildlife (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153398>). The 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 and distinguishes the circumstances in this rural, hillside setting as unusual when compared with development of a typical residential property in the City of Los Angeles.

Based on the reports in the record from the arborist for the applicant, and our expert knowledge of the location and its vegetation, the proper classification for the vegetation on the property is Coast Live Oak–California Walnut woodland association (Keeler-Wolf and Evens 2006). The site is not simply a Coast Live Oak woodland because of the presence of California Walnut on the site. The guide to identifying this vegetation association describes it as follows:

California walnut is subdominant to codominant with coast live oak in the overstory, and the understory may be open and grassy or may have shrub layer with poison oak. (Keeler-Wolf and Evens 2006).

Even though California walnuts were cut down at the site during the drought, they have significantly resprouted. Their presence as a subdominant to codominant species with Coast

Live Oaks within the project vicinity is diagnostic to classify the vegetation type at the property as a Coast Live Oak–California Walnut woodland.

The Coast Live Oak–California Walnut association has a global conservation status rank of G3 (“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”), and is recognized as a sensitive natural community by the California Department of Fish and Wildlife. The Los Angeles CEQA Thresholds Guide (p. C-6) recognizes loss of a sensitive natural community recognized by the California Department of Fish and Wildlife as a significant impact. Therefore, the development at 10034 Westwanda Drive would have a significant adverse impact on the environment.

Compliance with the City’s Protected Tree Ordinance is not sufficient to offset impacts from the loss of area of a sensitive natural community. Mitigation measures that are tied to replacing individual protected trees, such as Coast Live Oak, do not mitigate impacts that result in the loss of area of a sensitive natural community. The Protected Tree Ordinance focuses on the individual trees, but CEQA analysis requires recognition of the whole community of organisms that live within an area, in this instance within the Coast Live Oak–California Walnut woodland. Replacement of specimen trees on the site does not offset the loss in area of the sensitive natural community.

The Coast Live Oak–California Walnut association is a subtype of Coast Live Oak woodland. The strong relationships between oaks generally and wildlife are well established. An oft-cited figure reports that 320 species of vertebrates and 5,000 species of insects are associated with oak woodlands (Block et al. 1990, Pavlik et al. 1991). These totals make oak woodlands the richest overall wildlife habitats in California, and rank among the top three habitats for birds (Wilson et al. 1991). Oak woodlands are threatened by fire suppression, overgrazing, urban development, and disease. It is for this reason that the destruction of oak woodlands in general constitutes a significant environmental impact, and the vegetation association at the project site is even more important as a sensitive natural community. Again, these impacts are to the total area covered by the woodland, not just the impacts to the individual trees.

Replacing individual trees but not habitat area is ineffective. Scientists have firmly established the predictable relationship between habitat area and the number of species supported by that area (Arrhenius 1921, Preston 1948). The relationship, referred to as the “species–area curve,” is expressed by the equation $S = cA^z$ where S is number of species, A is area, and c and z are constants that vary by the ecosystem type and the geographic configuration of the area. If A decreases, then S also decreases. Because the proposed project would reduce the habitat area on the site considerably (at least by 30%), it will have a resulting impact on the number of species supported by the site. For example, of the rich complement of oak woodland bird species, some will be eliminated from the site as a result of the project and the replacement plantings of trees will be insufficient mitigation because they do not replace the area lost. People often imagine that wildlife at a development site will simply move to a new area after development, but this is not true; any suitable habitat surrounding will already be occupied and the wildlife numbers are reduced each time habitat is lost through development. Furthermore, without the integrated analysis required by CEQA, planting additional trees densely on a project site risks increasing

environmental impacts, such as bird collisions with windows or glass balcony rails of a new structure immediately adjacent to the mitigation trees. Without an appropriate CEQA review, the impacts of the new structure on wildlife, including night lighting, collisions, and fencing would be significant.

It is obvious that the proposed project would have a significant adverse impact on the environment through the loss of sensitive natural community and that the mechanism of individual oak tree replacement would be insufficient to address such loss.

In the arguments presented by the City that a Categorical Exemption is warranted, City staff compare the project to a typical hillside situation. This is the wrong comparison; the unusual circumstances comparison should be to the typical circumstances relative to development of a single-family home all across the City. In comparison with the City as a whole, the presence of State-recognized sensitive natural community on a single-family parcel constitutes an unusual circumstance without question.

Please consider these comments in your review of the proposed Categorical Exemption and find that the project does not qualify for such an exemption.

Sincerely,

Travis Longcore, Ph.D.
Certified Senior Ecologist

Catherine Rich, J.D., M.A.

Qualifications

Dr. Travis Longcore and Catherine Rich are principals of Land Protection Partners. Dr. Longcore is Associate Adjunct Professor in the Institute of the Environment and Sustainability at UCLA. He has taught, among other courses, Bioresource Management, Environmental Impact Analysis, Field Ecology, and Ecological Factors in Design. He was graduated *summa cum laude* from the University of Delaware with an Honors B.A. in Geography, holds an M.A. and a Ph.D. in Geography from UCLA, and is professionally certified as a Senior Ecologist by the Ecological Society of America and as a GIS Professional by the Geographic Information System Certification Institute. He is Chair of the Los Angeles County Environmental Review Board. Catherine Rich is Executive Officer of The Urban Wildlands Group. She holds an A.B. with honors from the University of California, Berkeley, a J.D. from the UCLA School of Law, and an M.A. in Geography from UCLA. She is lead editor of *Ecological Consequences of Artificial Night Lighting* (Island Press, 2006) with Dr. Longcore. Longcore and Rich have authored or co-authored over 45 scientific papers in top peer-reviewed journals such as *Auk*, *Avian Conservation and Ecology*, *Biological Conservation*, *Conservation Biology*, *Environmental Management*, *Trends in Evolution and Ecology*, and *Frontiers in Ecology and the Environment*. Longcore and Rich have provided scientific review of environmental compliance documents and analysis of complex environmental issues for local, regional, and national clients for 21 years.

Literature Cited

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- Block, W. M., M. L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* **18**:72–76.
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