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April 30, 2026

## **VIA ELECTRONIC UPLOAD**

Los Angeles City Planning Commission  
c/o Department of City Planning  
200 N. Spring Street, Room 525  
Los Angeles, CA 90012

**Re: Justification for Appeal of Vesting Tentative Tract Map No. VTT-84453  
(Riverwalk at Studio City) — 12501–12665 W. Ventura Boulevard; CEQA  
Case No. ENV-2025-5698-SE**

Dear Honorable Members of the City Planning Commission:

This firm represents Studio City for Safe Development (“Appellant” or “Association”), an unincorporated association of community members whose mission is to protect public safety and the natural environment in and around Studio City. This letter sets forth the Association’s justifications for appeal of the Advisory Agency’s April 15, 2026 approval of Vesting Tentative Tract Map No. VTT-84453 (the “VTT”) for the proposed mixed-use development at 12501–12665 West Ventura Boulevard, also known as the “Riverwalk at Studio City” project (the “Project”). The Project proposes the merger and re-subdivision of four legal lots into two master ground lots, three residential airspace lots, five commercial airspace lots, and eight parking airspace lots in order to facilitate construction of three seven-story buildings comprising 814 residential dwelling units and approximately 75,968 square feet of commercial space, together with a haul route approval for the export of approximately 521,000 cubic yards of dirt over 200 days at 144 truck trips per day.

The Association brings this appeal because it and its members have a direct and substantial beneficial interest in ensuring that the City of Los Angeles (“City”) complies with the Subdivision Map Act, the California Environmental Quality Act (“CEQA”), and other laws relating to environmental protection and public safety. The Association’s members live, work, and recreate in the immediate vicinity of the Project Site and will be directly and adversely affected by the

Project’s environmental impacts and by the public-safety hazards the Project will create or exacerbate, including impacts to sensitive wildlife, the loss of mature tree canopy along the Los Angeles River corridor, light pollution intruding into adjacent designated open space, and the increased risk of catastrophic harm during a wildfire evacuation in a Very High Fire Hazard Severity Zone.

As set forth below, the Advisory Agency’s findings under Government Code section 66474 are not supported by substantial evidence in the record. Specifically, the Advisory Agency cannot lawfully find on this record that (i) the proposed map is consistent with applicable General and Specific Plans (subdivisions (a)–(b)); (ii) the design of the subdivision is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat (subdivision (e)); or (iii) the design of the subdivision is not likely to cause serious public health problems (subdivision (f)). The VTT must be denied. At a minimum, the approval must be set aside because the Advisory Agency failed to make the findings required by law and lacks substantial evidence to support them.

**I. THE SUBDIVISION MAP ACT REQUIRES INDEPENDENT ENVIRONMENTAL REVIEW THAT IS SEPARATE FROM AND NOT EXCUSED BY THE CITY’S CEQA EXEMPTION DETERMINATION**

The Advisory Agency determined that the Project is statutorily exempt from CEQA pursuant to Public Resources Code section 21080.66. Even assuming arguendo that this exemption determination is correct (and the Association does not concede that it is), the City’s CEQA exemption finding does not relieve the Advisory Agency of its independent statutory duty to make the environmental and public-health findings required under the Subdivision Map Act.

Government Code section 66474, subdivision (e), independently requires that an advisory agency *deny* a tentative or vesting tentative tract map if it finds that the design of the subdivision or the proposed improvements *are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat*. Subdivision (f) of the same section likewise requires denial if the agency finds the design or improvements *are likely to cause serious public health problems*. These statutory findings exist independently of, and in addition to, the obligations imposed by CEQA.

The California Court of Appeal has expressly held that section 66474(e) creates an environmental review obligation that is **separate from and independent of CEQA**. In *Topanga Ass’n for a Scenic Cmty. v. County of L.A.* (1989) 214 Cal.App.3d 1348, the court rejected the argument that satisfaction of CEQA disposes of the duty to make the section 66474(e) finding, holding: “Appellants argue that elimination of their CEQA causes of action does not foreclose an environmental challenge to the approval of the project because the Subdivision Map Act, in Government Code section 66474, subdivision (e), provides for environmental impact review

separate from and independent of the requirements [of CEQA]. We agree.” *Id.* at 1355. The court reaffirmed the long-standing position of the California Attorney General that “the finding required by section 66474, subdivision (e) is in addition to the requirements for the preparation of an environmental impact report or a negative declaration pursuant to the CEQA.” *Id.* at 1355–1356, quoting 59 Ops.Cal.Atty.Gen. 129, 130 (1976).

The City’s reliance on a statutory exemption from CEQA under Public Resources Code section 21080.66 therefore does not, and cannot, satisfy the Subdivision Map Act’s independent requirement that the Advisory Agency assess whether the design of the subdivision will cause substantial environmental damage or serious public health problems. Indeed, the section 21080.66 exemption itself requires, as a condition precedent, that the Project comply with all applicable state and local building and safety standards — including the State Minimum Fire Safe Regulations discussed in Section IV below. The administrative record does not demonstrate that the Project so complies, thereby invalidating the City’s reliance on the CEQA exemption as a matter of law. In any event, the cursory, conclusory “findings” recited at page 20 of the April 15, 2026 Letter of Determination (“LOD”) fall far short of the substantial-evidence standard for the section 66474 findings.

The Advisory Agency’s approach effectively collapses two independent statutory schemes into one, treating a claimed CEQA exemption as a substitute for the findings required under Government Code section 66474. That is legal error. The Subdivision Map Act imposes a separate, mandatory duty to evaluate environmental damage and public health risks. That duty exists regardless of whether CEQA applies, and it cannot be avoided through reliance on a statutory exemption.

**II. THE FINDINGS UNDER GOVERNMENT CODE SECTION 66474, SUBDIVISIONS (a) AND (b), ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN SAFETY ELEMENT**

The Subdivision Map Act mandates denial of a tract map that is not consistent with applicable general and specific plans. Gov. Code § 66474, subs. (a)–(b). The General Plan includes the City’s Safety Element, which is governed by Government Code section 65302, subdivision (g).

Effective January 1, 2022, Assembly Bill 747 (2019) and Assembly Bill 1409 (2021) added Government Code section 65302.15, which requires that the safety element of every local jurisdiction’s general plan be reviewed and updated *to identify evacuation routes and their capacity, safety, and viability and evacuation locations under a range of emergency scenarios*. The Riverwalk Project Site is located in a Very High Fire Hazard Severity Zone (“VHFHSZ”). LOD, p. 4 (“This property is located in a Very High Fire Hazard Severity Zone.”); ZIMAS,

Environmental and Additional Information panels for APNs 2375-018-008, 013, 018, 019. Ventura Boulevard — the Project’s principal frontage and the only meaningful corridor for ingress and egress for the 814 proposed dwelling units — is also the primary evacuation route for the adjacent hillside neighborhoods to the south, all of which are likewise designated VHFHSZ.

Despite this critical factual context, the administrative record contains no analysis whatsoever — by the Advisory Agency, by the applicant, or by the Los Angeles Fire Department — of whether Ventura Boulevard can safely accommodate the combined evacuation load of (i) existing residents already evacuating onto Ventura Boulevard, (ii) the additional residents and commercial occupants generated by the Project, and (iii) LAFD emergency response and staging operations during a wildfire event. The Project’s Vesting Tentative Tract findings address only on-site driveway consolidation and signalization (Findings, pp. 21–22); they do not address corridor-level evacuation capacity. Reliance on California Fire Code requirements does not cure this deficiency, because those standards primarily govern emergency vehicle *ingress*, not civilian *egress* under mass-evacuation conditions.

This is not a minor omission in the administrative record. It is the complete absence of analysis of a known life-safety constraint in a Very High Fire Hazard Severity Zone. The City cannot lawfully approve a substantial increase in population along a constrained evacuation corridor without first demonstrating—based on substantial evidence—that evacuation remains feasible. No such evidence exists here.

Approving substantial increases in residential density along a known wildfire evacuation corridor, without any demonstrated analysis that safe egress remains feasible, creates a facial inconsistency with the Safety Element. Gov. Code § 65302, subd. (g); § 65302.15. The Advisory Agency’s bare consistency finding (LOD, pp. 17–18; Findings, pp. 1–8) does not engage with the Safety Element at all and therefore fails the substantial-evidence standard. *Topanga Ass’n for a Scenic Cmty. v. County of L.A.* (1974) 11 Cal.3d 506, 515 (findings must “bridge the analytic gap between the raw evidence and the ultimate decision or order”). Because the Project is not consistent with the General Plan Safety Element, the consistency findings under Government Code section 66474, *subdivisions (a) and (b)*, fail as a matter of law.

**III. THE FINDING THAT THE PROJECT WILL NOT CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY INJURE WILDLIFE OR THEIR HABITAT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE (Govt. Code § 66474(e))**

***A. The City’s two-sentence “finding” is conclusory and is contradicted by the City’s own ZIMAS data and by site-specific biological evidence in the record.***

Findings supporting a discretionary land-use approval must “bridge the analytic gap between the raw evidence and the ultimate decision or order” so as to enable meaningful judicial and public review. *Topanga*, 11 Cal.3d at 515. Conclusory findings that merely parrot the language of the governing statute are legally inadequate. *Ibid*. The Advisory Agency’s entire “finding” under Government Code section 66474(e) consists of two sentences, in their entirety:

“The project site is currently developed with commercial buildings and surface parking. The project site, as well as the surrounding area, is developed with structures and no identified fish, wildlife, or established habitat is located on-site. It has been determined that the project and the design of the subdivision and proposed improvements will not cause substantial environmental damage or injury to wildlife or their habitat.”

LOD, p. 20. That is the entire analysis.

The Advisory Agency’s foundational premise — that the Project Site contains no wildlife or wildlife habitat because it is currently “developed” — is **directly contradicted by the City’s own ZIMAS data**. The City’s ZIMAS report for the Project Site shows that the Site is flagged “Yes” for the **300-Foot Habitat Buffer**. As ZIMAS itself explains, the 300-Foot Habitat Buffer flag is applied to parcels “within 300 feet of suitable habitat to support special-status species,” and triggers Mitigation Measure 4.1-1(a) of the Housing Element Program EIR, which **requires the applicant to conduct a biological resource assessment**. *See* Housing Element CEQA Checklist Form (CP-4089) and Instructions (CP-4091). The City has neither acknowledged this designation nor required any biological resource assessment, even though the City’s own GIS data identifies suitable special-status species habitat within 300 feet of the Project Site.

Two sentences of unreasoned ipse dixit cannot, as a matter of law, constitute substantial evidence in support of the section 66474(e) finding when the City’s own data identify the site as being within a designated buffer of special-status species habitat. The Advisory Agency identifies no biological survey, no consultation with the California Department of Fish and Wildlife, no acoustic or emergence survey, no review of the California Natural Diversity Database, and no analysis whatsoever of the Project Site’s habitat function.

***B. Substantial evidence in the record demonstrates that the Project will remove a large number of mature trees that provide habitat for the western yellow bat, a California Species of Special Concern.***

The Tree Report prepared by Carlberg Associates, dated July 3, 2025, inventories 275 trees on and immediately adjacent to the Project Site. The Project proposes to remove 240 of the 244 onsite, non-protected private property trees, plus three additional street trees. Among the trees proposed for removal are **approximately 93 palm trees**, including 22 onsite Mexican fan palms (*Washingtonia robusta*), 8 king palms (*Archontophoenix cunninghamiana*), 19 queen palms (*Syagrus romanzoffiana*), and 44 pygmy date palms (*Phoenix roebelenii*). See Carlberg Associates, Protected Tree Report (July 3, 2025), Tables 2, 5, and 8.

These palms are located within feet of, and immediately across Valleyheart Drive from, the Los Angeles River. The same palm species, in essentially identical riparian conditions, exist directly across the Los Angeles River on the property formerly occupied by the Weddington Golf & Tennis facility, which has recently been redeveloped by the Harvard-Westlake School as the Harvard-Westlake River Park Project. The Draft Environmental Impact Report (“DEIR”) prepared for that immediately adjacent project, and the comments thereon prepared by Senior Biologist Scott Cashen, M.S. (a 29-year California environmental biologist who has served as a biological resources expert on more than 150 projects in California), establish — by substantial evidence in the form of expert biological opinion — that the Mexican fan palms on the Harvard-Westlake site provide suitable roosting habitat for the **western yellow bat** (*Lasiurus xanthinus*), a California Species of Special Concern. As Mr. Cashen explained:

“The western yellow bat (*Lasiurus xanthinus*) is a California Species of Special Concern that appears to roost exclusively in the skirts of palm trees located near open water or wetlands. The photographs provided in the tree report prepared by the Applicant’s arborist depict numerous palms at the Project site with skirts suitable for roosting bats.”

See **Exhibit A** - Letter from Scott Cashen, M.S., Senior Biologist, to Jamie T. Hall regarding Comments on the Draft EIR for the Harvard-Westlake River Park Project (May 8, 2022), p. 1. The City’s own DEIR for the Harvard-Westlake project likewise concluded that the western yellow bat “has moderate potential to roost and forage” within the biological study area on that site, and that “[t]he Biological Study Area supports a number of palm trees that would be suitable roosting habitat for this species. Additionally, the adjacent Los Angeles River may provide suitable foraging habitat above the river.” *Id.*, quoting Harvard-Westlake DEIR, p. IV.C-27. Loss of suitable roosting habitat is among the principal threats to the western yellow bat population, and yellow bats are deep sleepers that “feel safe in palm fronds and generally will not flush at signs of danger” — meaning they are “frequently killed or injured when palm trees are felled.” Cashen Letter, p. 3.

There is therefore substantial evidence — including the City’s own prior CEQA findings on the property directly across the Los Angeles River — that the same species of palm trees, growing in essentially identical riparian conditions on the Riverwalk Project Site, very likely provide roosting habitat for the western yellow bat. The Project proposes to fell virtually every palm tree on the site. The wholesale removal of the Project Site’s palm canopy will, on substantial evidence, result in direct mortality of, and the permanent loss of habitat for, a California Species of Special Concern. The City’s flat assertion that “no identified fish, wildlife, or established habitat is located on-site” is squarely refuted by this record. The City made no effort whatsoever to determine the presence, abundance, or distribution of yellow bats or other special-status species at the Project Site; conducted no acoustic, emergence, or roost survey; consulted no qualified biologist; ignored its own ZIMAS “300-Foot Habitat Buffer” designation; and ignored its own findings on the immediately adjacent Harvard-Westlake property. The two-sentence “finding” in the LOD is exactly the kind of “mere conclusion” that *Topanga* forbids. The City’s conclusion that no habitat exists on-site is not merely unsupported—it is directly contradicted by the record. This evidence alone is sufficient to require denial under Government Code section 66474(e).

***C. The Project will displace nesting and foraging birds previously displaced by the Harvard-Westlake redevelopment, compounding cumulative habitat loss along the Los Angeles River corridor.***

The recent Harvard-Westlake River Park redevelopment of the former Weddington Golf & Tennis facility involved the removal of a substantial number of mature trees from the property directly across the Los Angeles River from the Project Site. The avifauna of the Los Angeles River corridor in this segment includes more than 70 documented bird species, including resident, migratory, and special-status species. Cashen Letter, pp. 5–6 and footnote 20. As a matter of basic ecological principle, birds that lost their nesting and foraging habitat at the former Weddington site relocated to the closest available suitable habitat — which includes the mature canopy on the Project Site, located across the river. The Project’s wholesale removal of approximately 240 onsite trees will now displace those same individuals (and their progeny) a second time. “It is a fallacy to imagine that wildlife at a development site will simply move to a new area after development. This is false because suitable surrounding habitat will already be occupied. Wildlife numbers are reduced each time habitat is lost through development.” *See, generally, Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 701 (replacement trees do not mitigate loss of established tree habitat). The Advisory Agency made no analysis of these cumulative habitat impacts.

***D. The Project Site is immediately adjacent to designated Open Space and the Los Angeles River, and the Project will introduce significant new light pollution into that adjacent open space corridor.***

The Project Site is bordered on the north by Valleyheart Drive and, immediately beyond that, by parcels designated Open Space on the General Plan Land Use Map and zoned OS-1XL-RIO (the Los Angeles County Flood Control District parcels along the Los Angeles River), which form part of the City-designated River Implementation Overlay District (“RIO”). Findings, p. 19. The LOD itself imposes Bureau of Street Lighting Condition No. 13, which requires the construction of **ten new street lights along Valleyheart Drive** — directly on the boundary between the Project and the LA River Open Space corridor — and the relocation and upgrade of one street light on Whitsett Avenue and twelve street lights on Ventura Boulevard. LOD, p. 15 (Condition S-3.(c)(1)); LOD, p. 18 (Finding (b)). This new lighting infrastructure will introduce substantial new artificial light into the LA River Open Space corridor, which provides nocturnal foraging and movement habitat for bats (including the western yellow bat), migratory birds, and other species. Light pollution is a well-documented stressor on nocturnal wildlife. The Advisory Agency made no analysis of this potentially significant impact on adjacent open space and wildlife habitat. The two-sentence finding under section 66474(e) does not even acknowledge the Site’s immediate adjacency to designated Open Space and the Los Angeles River corridor.

For each of the foregoing independent reasons, and for the cumulative reasons set forth in Section V below, the Advisory Agency’s finding under Government Code section 66474(e) is not supported by substantial evidence and the VTT must be denied.

**IV. THE FINDING THAT THE PROJECT WILL NOT CAUSE SERIOUS PUBLIC HEALTH PROBLEMS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE THE PROJECT IS LOCATED IN A VERY HIGH FIRE HAZARD SEVERITY ZONE AND DOES NOT COMPLY WITH THE STATE MINIMUM FIRE SAFE REGULATIONS (Govt. Code § 66474(f))**

***A. The Project Site is located in a Very High Fire Hazard Severity Zone.***

There is no dispute that the Project Site is located in a Very High Fire Hazard Severity Zone. The LOD itself acknowledges this fact, expressly noting that “This property is located in a Very High Fire Hazard Severity Zone.” LOD, p. 4. The Advisory Agency’s own finding under section 66474(c) likewise acknowledges that “[t]he site is located within a high fire hazard severity zone.” LOD, p. 19. The City’s ZIMAS report for the Site also confirms the VHFHSZ designation. The applicant’s findings document also confirms the Site is within a VHFHSZ. Riverwalk at Studio City, VTT-84453 Findings (Sept. 19, 2025), p. 18.

***B. The Project is subject to, and does not comply with, the State Minimum Fire Safe Regulations.***

In 2018, the Legislature enacted Senate Bill 901, which mandated the expansion of California’s regulations regarding minimum fire safety standards to apply within all VHFHSZs, including those in Local Responsibility Areas such as the City of Los Angeles. *See* Gov. Code § 51177, subd. (i). The Board of Forestry and Fire Protection adopted implementing regulations, codified at California Code of Regulations, title 14, sections 1270.00 *et seq.* (the “State Minimum Fire Safe Regulations” or “Regulations”). The Regulations were adopted, after extensive consultation with fire professionals and community members, to protect life and limb during wildfire events.

Section 1270.03(a) provides that the Regulations apply to “the perimeters and access to all residential, commercial, and industrial Building construction . . . approved after July 1, 2021 within the [VHFHSZ].” Section 1270.03(c) further provides that the affected activities include the “permitting or approval of new parcels, excluding lot line adjustments as specified in Government Code (GC) section 66412(d).” Cal. Code Regs. tit. 14 § 1270.03(c)(1). The Project plainly involves both the construction of new residential and commercial buildings within a VHFHSZ approved after July 1, 2021, and the “permitting or approval of new parcels” within the meaning of section 1270.03(c)(1). The Regulations therefore apply.

Article 5 of the Regulations addresses Building Siting, Setbacks and Fuel Modification, and is intended “to reduce the intensity of a Wildfire, reducing the volume and density of flammable vegetation around Development through strategic fuel modification, parcel siting and Building setbacks . . . [to] provide for increased safety for emergency fire equipment, including evacuating civilians, and a point of attack or defense from a Wildfire.” Cal. Code Regs. tit. 14 § 1276.00. Section 1276.01 establishes the operative setback requirement:

“(a) All parcels shall provide a **minimum thirty (30) foot setback for all Buildings from all property lines** and/or the center of a Road, except as provided for in subsection (b).

(b) A reduction in the minimum setback shall be based upon practical reasons . . . **and shall provide for an alternative method to reduce Structure-to-Structure ignition** by incorporating features such as, but not limited to: (1) non-combustible block walls or fences; or (2) non-combustible material extending five (5) feet horizontally from the furthest extent of the Building; or (3) hardscape landscaping; or (4) a reduction of exposed windows on the side of the Structure with a less than thirty (30) foot setback; or (5) the most protective requirements in the California Building Code, California Code of Regulations Title 24, Part 2, Chapter 7A, as required by the Local Jurisdiction.”

Cal. Code Regs. tit. 14 § 1276.01(a)–(b) (emphasis added).

The Vesting Tentative Tract Map approved by the Advisory Agency plainly violates the State Minimum Fire Safe Regulations. The Tract Map and the applicant’s own findings document confirm that the Project is being designed with: **(i)** a 1.5-foot front yard setback along Ventura Boulevard; **(ii)** a 1.5-foot side yard setback along Whitsett Avenue; and **(iii)** a 1.5-foot rear yard setback along Valleyheart Drive (in lieu of the otherwise-required 19-foot setback). *See* Vesting Tentative Tract Map No. 84453 (stamp-dated October 14, 2025), Sheet 1 (“Notes”); Riverwalk at Studio City, VTT-84453 Findings (Sept. 19, 2025), pp. 9–10, 20. These setbacks are approximately twenty times smaller than the minimum required by state law. That is not a marginal deviation—it is a wholesale failure to comply with mandatory life-safety standards.

Nor has the Project been designed or conditioned to provide any of the alternative measures to reduce structure-to-structure ignition required by section 1276.01(b). The Tract Map does not show any non-combustible block walls or fences along the property lines, does not provide for the requisite five-foot non-combustible material zone extending from the building, does not substitute hardscape landscaping for vegetation in the setback areas, does not reduce exposed windows on the sides of the structures with the less-than-30-foot setback, and does not commit the project to the most protective requirements of California Building Code Title 24, Part 2, Chapter 7A. The Conditions of Approval set forth in the LOD likewise contain no condition that would bring the Project into compliance with section 1276.01(b). The City cannot approve a subdivision that fails to meet mandatory state fire safety regulations and simultaneously conclude that the Project will not create a serious public health problem.

***C. Approval of a subdivision in a VHFHSZ that does not comply with state-mandated fire safety setbacks creates a serious public health problem within the meaning of Government Code section 66474(f).***

The State Minimum Fire Safe Regulations were adopted, after extensive consultation with fire professionals, expressly to protect life and limb during wildfire events. Approval of this subdivision creates a foreseeable and significant risk to human life and is, by definition, *likely to cause serious public health problems* within the meaning of Government Code section 66474(f). The very purpose of the state regulations is to mitigate the catastrophic loss of life and property that has, in recent years, attended large wildfire events in California’s wildland-urban interface zones.

The Advisory Agency’s entire finding under section 66474(f) reads: “There appears to be no potential public health problems caused by the design or improvement of the proposed subdivision. The development is required to be connected to the City’s sanitary sewer system . . . .” LOD, p. 20. The finding is wholly limited to wastewater discharge to the Hyperion Treatment Plant. It contains no analysis whatsoever of the Project’s location in a VHFHSZ, no analysis of

compliance with the State Minimum Fire Safe Regulations, no analysis of evacuation capacity (notwithstanding the Project’s introduction of more than 1,600 additional residents and an undetermined number of commercial occupants served by a single-corridor evacuation route), no analysis of structure-to-structure ignition risk in light of the 1.5-foot setbacks, and no analysis of public-health impacts associated with wildfire smoke or the increased risk of human-caused wildfire ignitions associated with the introduction of substantial new population in close proximity to the wildland-urban interface. *See, e.g., People ex rel. Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222, 1231; *League to Save Lake Tahoe Mountain Area v. County of Placer* (2022) 75 Cal.App.5th 63, 136 (“[d]eveloping new homes and stores in a very high fire hazard area risks exacerbating the hazard”).

***D. The City has no analysis of evacuation capacity, and the Project’s reliance on Ventura Boulevard as the sole meaningful evacuation corridor independently creates a serious public health problem.***

The administrative record contains no corridor-level evacuation capacity analysis whatsoever — a critical and conspicuous evidentiary gap given Ventura Boulevard’s role as the primary wildfire evacuation route for the surrounding VHFHSZ neighborhoods. As discussed in Section II above, Ventura Boulevard already serves as the primary wildfire evacuation route for the existing hillside neighborhoods south of the Project Site, all of which are also designated VHFHSZ. The Project will introduce more than 1,600 additional residents (assuming an average of two persons per dwelling unit), an undetermined number of commercial customers and employees, and substantial new vehicle trips onto this same constrained corridor. The administrative record contains no analysis of corridor-level evacuation capacity, no analysis of intersection level-of-service under evacuation conditions, no analysis of Ventura Boulevard’s ability to simultaneously accommodate civilian evacuation and LAFD emergency response staging, and no analysis of the limited number of secondary emergency egress routes (effectively limited to Whitsett Avenue and Coldwater Canyon Avenue, both of which are themselves constrained two-lane corridors that quickly enter VHFHSZ hillside terrain).

Reliance on the California Fire Code is no answer. As discussed in Section II, those standards govern emergency vehicle *ingress*, not civilian *egress* under mass-evacuation conditions. A fire-access compliance determination does not — and cannot — substitute for a substantial-evidence analysis of whether the corridor can safely accommodate evacuation of its existing and future population under foreseeable wildfire conditions. The absence of this analysis is itself substantial evidence that the finding cannot be made. The Advisory Agency’s finding is not supported by substantial evidence and fails as a matter of law.

V. **THE CUMULATIVE IMPACTS OF THE PROJECT, IN COMBINATION WITH OTHER ONGOING AND REASONABLY FORESEEABLE PROJECTS ALONG THE VENTURA BOULEVARD CORRIDOR, INDEPENDENTLY ESTABLISH A LIKELIHOOD OF SERIOUS PUBLIC HEALTH PROBLEMS**

These projects are not speculative. They are approved, under construction, or actively pursued. Even if the Riverwalk Project alone did not establish a likelihood of serious public health problems (and as set forth above, it plainly does), the cumulative impact of the Project in combination with other ongoing and reasonably foreseeable projects in the immediate vicinity demonstrates such a likelihood. The City has an obligation to consider cumulative impacts in making its findings under Government Code section 66474; even where individual projects might be approved on their own terms, the City may not approve a project that, in combination with other projects, creates a foreseeable public-safety failure. The following projects are ongoing or reasonably foreseeable in the immediate Project vicinity and contribute to cumulative impacts on the Ventura Boulevard corridor and on the LA River Open Space corridor:

- **The Sportsmen’s Lodge Redevelopment** (Case No. CPC-2021-7012-DB-MCUP-WDI-SPP-SPR-VHCA), at 12805–12835 W. Ventura Boulevard and 4218–4230 N. Coldwater Canyon Avenue. The City Council approved the project on April 3, 2024, on a 13–1 vote. It comprises 520 residential units, 45,945 square feet of commercial space, 1,385 parking spaces, and three buildings up to approximately 94–97 feet in height, with approximately 430,000 cubic yards of excavation. Construction overlaps with the Riverwalk Project. The Sportsmen’s Lodge site shares the same C1.5-1VL strip and the same single-corridor evacuation constraint.
- **The Harvard-Westlake River Park Project** (City Council approved November 14, 2023), located directly across the Los Angeles River at 4047, 4141, and 4155 N. Whitsett Avenue and 12506, 12600, and 12630 W. Valley Spring Lane. The project includes a 50-meter pool, an approximately 80,249-square-foot gymnasium, two athletic fields, eight tennis courts, and 403 parking spaces. The Harvard-Westlake project removed substantial mature tree canopy from the former Weddington Golf & Tennis facility, displacing avifauna onto the Riverwalk Project Site (among other adjacent sites), as discussed in Section III(C) above.
- **The Sunswept Place Project** at 12544–12582 Ventura Boulevard and 4041–4073 Sunswept Drive, on the south side of Ventura Boulevard directly across from a portion of the Riverwalk Project Site. The pending plan of record provides for 27 fourth-level condominium units (with 5 very-low-income units), 17,400 square feet of commercial space, and 154 parking spaces. Public testimony at the April 2026 hearing referenced a

substantially larger version of this project (177 units, 31,743 square feet of commercial, and a 130-child daycare); to the extent that larger project is filed, cumulative impacts increase materially.

- **The 12434 Moorpark Street Project** (Executive Directive 1 application), 102 two-bedroom units in a five-story building with *no on-site parking*, filed late 2024 and pursuing density bonus incentives.
- **The 12750 Moorpark Street Project** (Executive Directive 1 application), 51 affordable units in a five-story building with *no on-site parking*, application filed September 2023, pursuing density bonus incentives.

Critically, all five of these cumulative projects (along with the Riverwalk Project itself) lie within less than approximately 0.7 miles of one another along the same Ventura Boulevard corridor, concentrating the combined population, vehicular, excavation, and evacuation impacts within a single localized segment of Studio City. Taken together, these projects propose more than 1,500 additional residential dwelling units within several blocks of the Riverwalk Project Site, plus substantial new commercial floor area and substantial new excavation and haul activity. They will be served, in the aggregate, by the same constrained Ventura Boulevard corridor that already serves as the primary wildfire evacuation route for the adjacent hillside VHFHSZ neighborhoods. Several of the projects (notably the Moorpark ED1 projects) contain no on-site parking, increasing on-street parking demand and further constraining the capacity of the corridor and the side streets to accommodate evacuation. None of these cumulative impacts is acknowledged anywhere in the Advisory Agency's section 66474(f) finding, which addresses only Hyperion Treatment Plant capacity. The Advisory Agency's failure to consider cumulative impacts in making the section 66474(f) finding independently requires reversal.

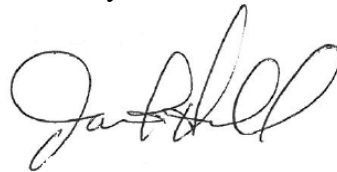
## **VI. CONCLUSION**

For all of the reasons set forth above, the approval of VTT-84453 is unlawful. The VTT must be denied. At a minimum, the approval must be set aside and remanded to the Advisory Agency with directions to (i) make adequate, substantial-evidence-based findings under Government Code section 66474, subdivisions (a)–(b), (e), and (f), independent of any CEQA exemption determination; (ii) require the applicant to conduct the biological resource assessment required by Mitigation Measure 4.1-1(a) of the Housing Element Program EIR in light of the Site's "300-Foot Habitat Buffer" designation; (iii) require the City and the applicant to evaluate and demonstrate corridor-level evacuation capacity along Ventura Boulevard under foreseeable wildfire conditions, both for this Project alone and cumulatively with other ongoing and reasonably foreseeable Ventura Boulevard projects; and (iv) require the Project to be designed and conditioned to comply with the State Minimum Fire Safe Regulations, Cal. Code Regs. tit. 14 §§

1270.00 *et seq.*, before any further approval may issue. The Advisory Agency's findings under Government Code section 66474, subdivisions (a)–(b), (e), and (f), are not supported by substantial evidence, cannot be lawfully made on this record, and require reversal.

Appellant reserves the right to supplement the bases for this appeal at or before any hearing on the matter. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie T. Hall". The signature is fluid and cursive, with the first name "Jamie" being the most prominent part.

Jamie T. Hall  
Attorney for Studio City for Safe Development

# **Exhibit A**

May 8, 2022

Mr. Jamie T. Hall  
Channel Law Group, LLP  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

**Subject: Comments on the Draft Environmental Impact Report for the Harvard-Westlake River Park Project**

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Dear Mr. Hall:

This letter contains my comments on the Draft Environmental Impact Report (“DEIR”) prepared by the City of Los Angeles (“City”) for the Harvard-Westlake River Park Project (“Project”). The Project Applicant, Harvard-Westlake School (“Applicant”) proposes construction and operation of an athletic and recreational facility on a 16.1-acre parcel owned by the Applicant, and a 1.1-acre parcel leased from the Los Angeles County Flood Control District, in the community of Studio City. Although the majority of the Project site is currently occupied by a private golf course and tennis facility, some components of the Project extend into the Zev Yaroslavsky Los Angeles River Greenway (“Zev Greenway”).

I am an environmental biologist with 29 years of professional experience in wildlife biology and natural resources management. I have served as a biological resources expert for over 150 projects in California. My experience and scope of work in this regard has included assisting various clients with evaluations of biological resource issues; preparation and peer review of environmental compliance documents prepared pursuant to the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”); and preparation of written comments that address deficiencies with CEQA and NEPA documents. My work has included written and oral testimony for the California Energy Commission, California Public Utilities Commission, and Federal courts. My educational background includes a B.S. in Resource Management from the University of California at Berkeley, and a M.S. in Wildlife and Fisheries Science from the Pennsylvania State University. A copy of my curriculum vitae is attached hereto.

The comments herein are based on my review of the environmental documents prepared for the Project, a review of scientific literature pertaining to biological resources known to occur in the Project area, consultations with other biological resource experts, and the knowledge and experience I have acquired during my 29-year career in the field of natural resources management.

- The DEIR does not adequately disclose, analyze, or mitigate impacts to the western yellow bat (and potentially other special-status bat species).

- The DEIR fails to provide an accurate assessment of impacts to the California brittlebush scrub community (a sensitive natural community). In addition, the DEIR impermissibly defers critical components of the proposed mitigation.
- The DEIR fails to disclose, analyze, or provide mitigation for the avian collision hazard associated with Project design features (large expanses of glass).

## ENVIRONMENTAL SETTING

### The DEIR Fails to Establish the Environmental Setting with Respect to the Western Yellow Bat

The western yellow bat (*Lasiurus xanthinus*) is a California Species of Special Concern that appears to roost exclusively in the skirts of palm trees located near open water or wetlands.<sup>1</sup> The photographs provided in the tree report prepared by the Applicant's arborist depict numerous palms at the Project site with skirts suitable for roosting bats.<sup>2</sup> According to the DEIR:

“Western yellow bat has moderate potential to roost and forage in the Biological Study Area. The Biological Study Area supports a number of palm trees that would be suitable roosting habitat for this species. Additionally, the adjacent Los Angeles River may provide suitable foraging habitat above the river and near the southwestern boundary of the Biological Study Area.”<sup>3</sup>

Although the DEIR acknowledges there is potential for western yellow bats to occur at the Project site, there was no effort to determine presence, abundance, and distribution of the species at the site, nor were there any attempts to determine how many of the site's 174 palm trees contain bat roosts. The DEIR's failure to establish the environmental setting (with respect to bats) precludes informed decision making and public participation because it precludes understanding of the severity of the Project's impacts on the western yellow bat population. For example, without data on the number of active bat roosts at the Project site, the public (and City) have no idea whether the Project would affect 1 yellow bat, 100 yellow bats, or no yellow bats. This lack of information not only has implications on the public's ability to understand the Project's impacts, but also the City's ability to effectively evaluate the significance threshold used in the DEIR (i.e., “[w]ould the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species...”). Whereas loss of one active bat roost from the Project site would not have a substantial adverse effect on the western yellow bat population, the loss of 50 active roosts (for example) would have severe, and potentially unmitigable impacts on the population. To properly disclose, analyze, and mitigate the Project's impacts on bats, the City must conduct surveys to determine the presence, abundance, and distribution of active roosts at the site, and these data must be released to the public in a recirculated DEIR.

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<sup>1</sup> Pierson ED, Rainey WE. 1998. Western yellow bat, *Lasiurus xanthinus*. In: Bolster BC, ed. Terrestrial Mammal Species of Special Concern in California. pp. 50 and 51. See also Marty J, Unnasch R. 2015. Western Yellow Bat (*Lasiurus xanthinus*) (WYBA) Basic Conceptual Ecological Model for the Lower Colorado River. Submitted to the Bureau of Reclamation, Boulder City, Nevada, by Sound Science, LLC, Boise, Idaho.

<sup>2</sup> DEIR, Appendix A (Arborist Report) to Appendix D (Biological Resources Technical Report).

<sup>3</sup> DEIR, p. IV.C-27.

## PROJECT IMPACTS

### The DEIR Fails to Adequately Disclose and Analyze Project Impacts to the Western Yellow Bat

#### Direct Impacts

The DEIR's analysis of direct impacts to the western yellow bat is limited to the statement that: "[c]onstruction of the Project could result in potentially significant direct impacts to this bat species if tree removal commences during the maternity roosting season (generally March 1 through September 30)."<sup>4</sup>

Direct impacts to the western yellow bat (and other bat species) are not limited tree removal during the maternity roosting season. Some western yellow bats are year-round residents in southern California.<sup>5</sup> These bats may use trees at the Project site as day roosts, night roosts, or maternity roosts.<sup>6</sup> Consequently, western yellow bats may occur in trees (especially the palms) at the Project site at any time of day (or night), on any day of the year.

Yellow bats are deep sleepers.<sup>7</sup> Even when fully awake, they feel safe in palm fronds and generally will not flush at signs of danger.<sup>8</sup> As a result, yellow bats are frequently killed or injured when palm trees are felled.<sup>9</sup> Because bats are a prey species that has few behavioral defenses against predation, they rely on concealment (at roosts) to avoid predation by diurnal predators. Therefore, even if bats flush from a tree as it is being felled, most of these individuals are likely to die due to predation or exposure. The DEIR fails to analyze impacts to, or incorporate mitigation for, bats that may occupy trees at the Project site during the non-maternity season.

The Project entails removing 121 of the Mexican fan palms that occur at the Project site. This represents a substantial number of potential roosts for the western yellow bat. Incredibly, the DEIR provides *no analysis* of this habitat loss. Because the loss of suitable roosting habitat is one of the primary threats to the western yellow bat population,<sup>10</sup> and because the DEIR does not incorporate compensatory mitigation, potentially significant impacts on the western yellow bat remain unmitigated.

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<sup>4</sup> DEIR, p. IV.C-32.

<sup>5</sup> Pierson ED, Rainey WE. 1998. Western yellow bat, *Lasiurus xanthinus*. In: Bolster BC, ed. Terrestrial Mammal Species of Special Concern in California. pp. 50 and 51.

<sup>6</sup> Day roosts are used during the day for sleep and protection from predators and heat exposure. Night roosts are used at night to rest, digest food, conserve energy, and avoid predators. Maternity roosts are used to give birth and raise young.

<sup>7</sup> Austin Bat Refuge. 2021. Palm Trees [webpage]. Available at: <<https://austinbatrefuge.org/palm-trees/>>. (Accessed 6 May 2022).

<sup>8</sup> *Ibid.* See also Tatarian G. 2018. Conserving California's Bats Through Environmental Review and Permitting. CDFW Conservation Lecture Series Archive. Available at: <<https://wildlife.ca.gov/Conservation/Lectures/Archive#ACEApr12>>. (Accessed 6 May 2022).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

## Indirect Impacts

According to the DEIR:

“There would also be additional indirect impacts to special-status bat species from noise and human activities associated with Project construction; however, construction activities would be temporary on an intermittent basis, and potential on-site tree roosts would be removed during the initial construction phase if no active roosts are found. As such, impacts would not diminish the long-term survival of a special-status bat species and, therefore, would be less than significant.”<sup>11</sup>

A fundamental flaw with the DEIR’s analysis is that it fails to discuss *how* noise and human activities associated with construction would impact bats at the Project site. For example, the DEIR does not identify whether construction activities would affect vital rates (e.g., survival and recruitment), behavior (e.g., roost attendance, sleep and torpor, movement patterns), habitat use, predator-prey relationships, or other variables that may influence the bat population. This precludes the public’s ability to validate the DEIR’s conclusion that Project impacts “would not diminish the long-term survival of a special-status bat species and, therefore, would be less than significant.”

The DEIR provides two reasons for its determination that Project impacts to special-status bats would be less than significant. The DEIR’s first reason is that construction activities would be “temporary.” Project construction activities would occur for approximately two and a half years,<sup>12</sup> which would encompass two or three reproductive cycles of the bat population (bats reproduce only once per year). Bats have low reproductive rates, high juvenile mortality, and long generational turnover.<sup>13</sup> Consequently, any reduction in reproductive output (or success) can have a substantial impact on viability of the bat population. Indeed, it can take a colony (population) many years to recover from activities that cause mortality or even temporary reduced fecundity (i.e., the ability to produce offspring).<sup>14</sup> Therefore, although a 2.5-year impact might be temporary from a human perspective, it is not “temporary” from the bat’s perspective.

The DEIR’s second reason is that potential roosts would be removed during the initial construction phase. This reason is both confusing and illogical. First, the rationale is confusing because the Project does not involve removal of all potential roosts (e.g., 181 trees would remain, of which 53 are Mexican fan palms).<sup>15</sup> Therefore, removing potential roosts (trees) during the initial construction phase does not eliminate the potential for significant indirect impacts to bats. Second, the rationale is illogical because removing potential roosts would generate a different type of indirect impact to bats. Specifically, removing roosts would eliminate a habitat element essential to survival and reproduction. If replacement roosts are not

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<sup>11</sup> DEIR, pp. IV.C-40 and -41.

<sup>12</sup> DEIR, p. II-61.

<sup>13</sup> Western Bat Working Group. 2005 [update]. Species account for the western yellow bat. Available at: <<http://wbwg.org/western-bat-species/>>. (Accessed 6 May 2022).

<sup>14</sup> Johnston D, Tatarian G, Pierson E. 2004. California Bat Mitigation Techniques, Solutions, and Effectiveness. Report to California Department of Transportation, Sacramento, California. Project Number 2394-01.

<sup>15</sup> DEIR, pp. IV.C-54 and -55.

available, the loss of roosts from the Project site would eliminate the reproductive potential of all individuals that are displaced from the Project site. As a result, and contrary to the DEIR's assertion, removing roosts from the Project site would reduce the potential for "long-term survival," especially for an organism that is already exposed to numerous threats (e.g., habitat loss, pesticides, and wind turbine strikes, among others).

### **The DEIR Fails to Provide an Accurate Assessment of Impacts to the California Brittlebush Scrub Community (A Sensitive Natural Community)**

In 2017, the Zev Greenway was restored to native coastal sage scrub habitat along a majority of the Project Site's southern boundary. The restored habitat includes a diverse mix of native species (although some non-native species remain). Because California brittlebush (*Encelia californica*) is the dominant species in the restoration area, it was classified as California brittlebush scrub, which is a sensitive natural community in the State of California.<sup>16</sup>

The DEIR states that the proposed river connection trail, river fence, and river overlook would directly impact 0.14 acres of California brittlebush scrub. However, according to the DEIR, the Project would not have significant indirect impacts on the California brittlebush scrub community because: (a) it occurs along an existing public trail (i.e., the Zev Greenway trail), and (b) "plants would not be affected by subtle changes in Project light, noise, or human activity."<sup>17</sup> The DEIR's rationale is flawed because it fails to recognize that the Project would not only increase human activity along the existing trail, but that it would also create a new trail that bisects the California brittlebush scrub community, thereby increasing the proportion of that community that would be susceptible to trampling, weed invasion, and other adverse edge effects associated with fragmentation. In addition, because the proposed river connection trail would not provide the shortest route to the Zev Greenway trail, students and spectators are likely to create shortcuts (and other unauthorized trail routes) through the California brittlebush scrub, as depicted in Figure 1 (below). This would cause further loss, degradation, and fragmentation of the sensitive natural community. The DEIR fails to incorporate mitigation for this potentially significant indirect impact.

The Project includes installation of 38 trees in the California brittlebush scrub community along the Zev Greenway.<sup>18</sup> As these trees mature, they will substantially decrease the amount of sunlight reaching plants in the shrub layer. This is important because California brittlebush, coast goldenbush, Nevin's barberry (an endangered species), and most of the other plant species that occur along the Zev Greenway are adapted to full sun (or part shade),<sup>19</sup> and thus are unlikely to persist in the shady conditions created by the Project's trees. The DEIR fails to analyze this potentially significant indirect impact on the California brittlebush scrub community and the two Nevin's barberry plants that occur therein.

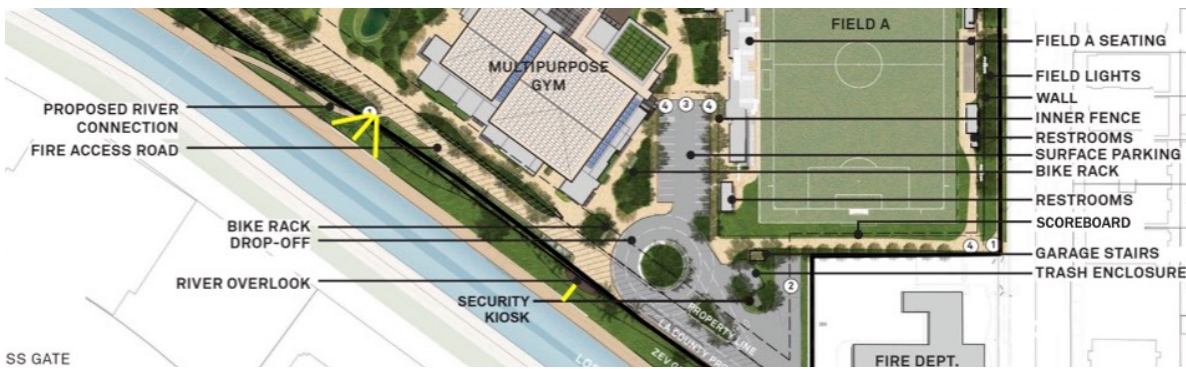
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<sup>16</sup> DEIR, p. IV.C-19.

<sup>17</sup> DEIR, p. IV.C-43.

<sup>18</sup> DEIR, Figure IV.C-5.

<sup>19</sup> California Native Plant Society. 2022. Calscape [website]. Available at: <<https://calscape.org/>>. (Accessed 4 May 2022). See also California Native Plant Society. 2022. A Manual of California Vegetation, Online Edition. Available at: <<https://vegetation.cnps.org/>>. (Accessed 4 May 2022).



**Figure 1.** Unauthorized trail shortcuts (yellow lines) that are likely to be created through the California brittlebush scrub community following Project development.

### The DEIR Fails to Disclose, Analyze, or Incorporate Mitigation for Avian Collisions

The Project site and adjacent Los Angeles River corridor support at least 74 species of birds,<sup>20</sup> some of which are classified as special-status species.<sup>21</sup> These include summer residents, winter residents, year-round residents, and birds that move through the Project area during migration.

Collision with windows is second only to predation by domestic cats as an anthropogenic source of avian mortality.<sup>22</sup> Klem (2009) estimated over one billion birds are killed each year due to collisions with clear and reflective sheet glass in the U.S. alone.<sup>23,24</sup> The visual system of birds is simply not capable of perceiving glass as a physical obstacle.<sup>25</sup> Casualties occur from head trauma after leaving a perch from as little as one meter away in an attempt to reach habitat seen through, or reflected in, clear and tinted panes.<sup>26</sup> Glass windows kill birds in urban, suburban, and rural settings.<sup>27</sup> There is no window size, building structure, time of day, season of year, or

<sup>20</sup> DEIR, Appendix B to Appendix D (Biological Resources Technical Report). *See also checklist for the Los Angeles River--Whitsett to Coldwater Hotspot at:* eBird. 2022. eBird: An online database of bird distribution and abundance [web application]. eBird, Cornell Lab of Ornithology, Ithaca, New York. Available at: <<http://www.ebird.org>>. (Accessed 5 May 2022).

<sup>21</sup> Special-status species documented in the Project are include the osprey, Cooper’s hawk, rufous hummingbird, Vaux’s swift, and yellow warbler. *See* California Department of Fish and Wildlife, California Natural Diversity Database. 2022 Apr. Special Animals List. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>>. (Accessed 5 May 2022).

<sup>22</sup> Loss SR, Will T, Loss SS, Marra PP. 2014. Bird-Building Collisions in the United States: Estimates of Annual Mortality and Species Vulnerability. *The Condor* 116:8–23.

<sup>23</sup> Klem D Jr. 2009. Avian Mortality at Windows: The Second Largest Human Source of Bird Mortality on Earth. *Proceedings of the Fourth International Partners in Flight Conference: Tundra to Tropics.* 244-251.

<sup>24</sup> Daniel Klem Jr. is an ornithologist known for his pioneering research into the mortality of birds due to glass windows. He is Sarkis Acopian Professor of Ornithology and Conservation Biology at Muhlenberg College. Dr. Klem has been publishing peer-reviewed studies on bird-window collisions since 1989. *See* <<http://www.muhlenberg.edu/main/academics/biology/facultystaff/danielklemjr/>>.

<sup>25</sup> Klem D Jr. 2009. Preventing Bird-Window Collisions. *The Wilson Journal of Ornithology* 121(2):314–321.

<sup>26</sup> Klem D Jr. 2009. Avian Mortality at Windows: The Second Largest Human Source of Bird Mortality on Earth. *Proceedings of the Fourth International Partners in Flight Conference: Tundra to Tropics.* 244-251.

<sup>27</sup> Klem D Jr. 1990. Collisions Between Birds and Windows: Mortality and Prevention. *Journal of Field Ornithology.* 61(1):120-128.

weather conditions during which birds elude the lethal hazards of glass.<sup>28</sup>

Scientists have determined that bird mortality caused by collisions with structures is “biologically significant”<sup>29</sup> and that avian mortality from window collisions is contributing to population declines of special-status species and birds in general.<sup>30</sup> As a result, several cities (e.g., San Francisco, New York) have adopted standards for “bird-safe” buildings.

### Causal Factors of Avian Collisions

There are two factors that cause birds to collide with human-built structures. The first is the lighting of structures at night, which “traps” and disorients many species of nocturnal migrants, making them vulnerable to collision with obstructions.<sup>31</sup> Those birds that are not killed outright by impact with lit windows are disoriented by the light and continue to fly around the light source, often to the point of exhaustion (which often leads to death).<sup>32</sup>

The second factor is the presence of architectural glass (e.g., windows), which birds in flight either cannot detect, or misinterpret.<sup>33</sup> Almost every type of architectural glass under the right conditions reflects the sky, clouds, or nearby trees and vegetation.<sup>34</sup> Glass that reflects the environment presents birds with the appearance of safe routes, shelter, and possibly food ahead. When birds try to fly to the reflected habitat, they hit the glass.

The bulk of bird deaths result when lone, confused birds mistake glass for a safe flight path.<sup>35</sup> During migration, birds make stops to rest and refuel. After landing, these birds make short, low flights near dawn, searching for feeding areas.<sup>36</sup> Thus, they are susceptible to collisions as they ascend, descend, and search for the resources needed to continue their migratory journey. Consequently, night-migrating songbirds<sup>37</sup>—already imperiled by habitat loss and other environmental stressors—face a dual risk, threatened both by illuminated buildings when they

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<sup>28</sup> Klem D Jr. 2009. Avian Mortality at Windows: The Second Largest Human Source of Bird Mortality on Earth. Proceedings of the Fourth International Partners in Flight Conference: Tundra to Tropics. 244-251.

<sup>29</sup> Longcore T, Rich C, Gauthreaux SA Jr. 2005. Scientific Basis to Establish Policy Regulating Communications Towers to Protect Migratory Birds. WT Docket No. 03-187, Federal Communications Commission Notice of Inquiry. Available at: <<https://ecfsapi.fcc.gov/file/6517288491.pdf>>.

<sup>30</sup> Klem D Jr. 2009. Preventing Bird-Window Collisions. *Wilson Journal of Ornithology* 121(2):314-321. *See also* Klem D Jr. 1990. Collisions Between Birds and Windows: Mortality and Prevention. *Journal of Field Ornithology*. 61(1):120-128.

<sup>31</sup> Ogden LJ. 1996. Collision Course: The Hazards of Lighted Structures and Windows to Migrating Birds. A Special Report for the World Wildlife Fund Canada and the Fatal Light Awareness Program. 45 pp.

<sup>32</sup> *Ibid.*

<sup>33</sup> Klem D Jr. 1990. Collisions Between Birds and Windows: Mortality and Prevention. *Journal of Field Ornithology*. 61(1):120-128. *See also* Klem D Jr. 2009. Preventing Bird-Window Collisions. *Wilson Journal of Ornithology* 121(2):314-321.

<sup>34</sup> San Francisco Planning Department (*and references therein*). 2011. Standards for Bird-Safe Buildings. 42 pp.

<sup>35</sup> Klem D Jr. 1990. Collisions Between Birds and Windows: Mortality and Prevention. *Journal of Field Ornithology*. 61(1):120-128.

<sup>36</sup> Ogden LJ. 1996. Collision Course: The Hazards of Lighted Structures and Windows to Migrating Birds. A Special Report for the World Wildlife Fund Canada and the Fatal Light Awareness Program. 45 pp.

<sup>37</sup> Most songbirds migrate at night.

fly at night and by daytime glass collisions as they seek food and shelter.<sup>38</sup>

### Project-Specific Hazards

A poorly designed building can kill hundreds of birds per year.<sup>39</sup> A few variables in particular have proven to be especially lethal to birds. As described below, the proposed Project incorporates design variables known to cause high levels of avian mortality:

1. Buildings with reflective or transparent windows, large windows, or a high percentage of glass.

Birds have been reported to strike two general types of windows: (1) transparent windows, which appear invisible to birds and (2) reflective windows, which mirror the facing habitat.<sup>40</sup> In addition, studies have shown that buildings with large windows or a high percentage of glass kill a disproportionately high number of birds.<sup>41</sup>

The proposed Project would have transparent and reflective windows.<sup>42</sup> All of the Project's buildings would have large windows (or panes of glass).<sup>43</sup> In addition, the proposed gymnasium and swimming pool buildings would contain a high percentage of glass. Indeed, one of the sustainability features touted in the DEIR is: “[n]atural light to be harvested for the main spaces in the gymnasium building using *large expanses of glass* and skylights...”<sup>44</sup>

The threat large expanses of glass pose to birds is exacerbated when windows are installed on opposite sides of a building directly across from one another or at a corner, because birds perceive an unobstructed passageway and fly towards the glass with no awareness of an obstacle.<sup>45</sup> The proposed gymnasium and pool buildings would possess this “design trap.”

2. Buildings with windows located adjacent to extensive vegetation.

Several studies have provided evidence that buildings with windows adjacent to extensive

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<sup>38</sup> San Francisco Planning Department (*and references therein*). 2011. Standards for Bird-Safe Buildings. 42 pp.

<sup>39</sup> Hager SB, Trudell H, McKay KJ, Crandall SM, Mayer L. 2008. Bird Density and Mortality at Windows. *Wilson Journal of Ornithology* 120(3):550-564.

<sup>40</sup> Gelb Y, Delacretaz N. 2009. Windows and Vegetation: Primary Factors in Manhattan Bird Collisions. *Northeastern Naturalist* 16(3):455-470. *See also* Klem D Jr. 1989. Bird Window Collisions. *The Wilson Bulletin* 101(4):606-620.

<sup>41</sup> Klem D Jr, Farmer CJ, Delacretaz N, Gelb Y, Saenger PG. 2009. Architectural and Landscape Risk Factors Associated with Bird-Glass Collisions in an Urban Environment. *Wilson Journal of Ornithology* 121(1):126-134. *See also* Parkins KL, Elbin SB, Barnes E. 2015. Light, Glass, and Bird-building Collisions in an Urban Park. *Northeastern Naturalist* 22(1):84-94. *See also* Hager SB, Trudell H, McKay KJ, Crandall SM, Mayer L. 2008. Bird Density and Mortality at Windows. *Wilson Journal of Ornithology* 120(3):550-564.

<sup>42</sup> *See* DEIR, Figures II-7, II-8, and II-13. Glass can appear transparent or highly reflective, depending on weather or time of day.

<sup>43</sup> *See* DEIR, Figures II-7, II-8, and II-13.

<sup>44</sup> DEIR, p. II-60. [emphasis added].

<sup>45</sup> New York City Audubon. 2007. Bird-Safe Building Guidelines. p. 6.

vegetation kill numerous birds.<sup>46</sup> Buildings that have windows at lower stories (below 60 feet) are the most dangerous because those windows are at or below canopy height and are more likely to reflect trees and other landscape features that attract birds.<sup>47</sup> In suburban areas, buildings with these features have been documented to kill an average of 30 birds per year (per building).<sup>48</sup> This combination may be even more lethal in urban areas. Studies of Manhattan structures with large swaths of windows adjacent to large open spaces have recorded well over 100 collisions per year (per structure).<sup>49</sup>

The proposed Project includes installation of large expanses of glass near ground level and adjacent to vegetation attractive to birds.<sup>50</sup> This would create a significant collision hazard to birds.

The American Bird Conservancy and New York City Audubon Society have developed bird-friendly design standards for new buildings.<sup>51</sup> Because the Project does not incorporate these (or comparable) design standards, the Project's impact on bird populations would be potentially significant.

## MITIGATION ISSUES

### BIO-MM-1 (Special-Status Bats)

BIO-MM-1 requires the Applicant to implement either of the following measures:

- 1) "Tree removal activities shall be scheduled outside of the maternity roosting season (October 1 through February 28) to avoid potential impacts to special-status bat species."
- 2) "Any construction or palm tree removal activities that occur during the maternity roosting season for special-status bat species (March 1 through September 30) shall require a qualified biologist experienced with bat roost biology to conduct a pre-construction (or pre-tree removal) survey, using sonic bat detectors (e.g., Anabat or Sonobat) to determine whether special-status bat species are roosting within trees that would be removed. The surveys shall be conducted at dusk and after nightfall by a biologist. If an active roost site is located during the pre-construction survey, the roost shall be avoided and Project activities shall be conducted as recommended by the biologist to avoid the area, which may include temporary postponement or provision of a suitable buffer established around

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<sup>46</sup> San Francisco Planning Department (*and references therein*). 2011. Standards for Bird-Safe Buildings. 42 pp. *See also* Gelb Y, Delacretaz N. 2009. Windows and Vegetation: Primary Factors in Manhattan Bird Collisions. *Northeastern Naturalist* 16(3):455-470. *See also* Klem D Jr, Farmer CJ, Delacretaz N, Gelb Y, Saenger PG. 2009. Architectural and Landscape Risk Factors Associated with Bird-Glass Collisions in an Urban Environment. *Wilson Journal of Ornithology* 121(1):126-134.

<sup>47</sup> *Ibid.*

<sup>48</sup> Klem D Jr. 1990. Collisions Between Birds and Windows: Mortality and Prevention. *Journal of Field Ornithology*. 61(1):120-128. *See also* O'Connell TJ. 2001. Avian Window Strike Mortality at a Suburban Office Park. *The Raven* 72(2):141-149.

<sup>49</sup> Gelb Y, Delacretaz N. 2009. Windows and Vegetation: Primary Factors in Manhattan Bird Collisions. *Northeastern Naturalist* 16(3):455-470.

<sup>50</sup> *See* DEIR, Figures IV.C-5 and -6.

<sup>51</sup> American Bird Conservancy and New York City Audubon Society. 2015. Bird-Friendly Building Design, 2nd Ed. Available at: <[https://abcbirds.org/wp-content/uploads/2015/05/Bird-friendly-Building-Guide\\_LINKS.pdf](https://abcbirds.org/wp-content/uploads/2015/05/Bird-friendly-Building-Guide_LINKS.pdf)>

the roost until roosting activities cease. Suitable buffers could include netting, canvas, or similar materials as recommended by the biologist. A report shall be submitted to the City with the results of the pre-construction or tree removal survey and any needed maternity roost avoidance actions.”

As discussed previously, tree removal outside of the maternity roosting season would avoid direct impacts to bats that use the trees for maternity purposes, but it would not avoid direct impacts to bats that use the trees as day roosts.<sup>52</sup>

There are several reasons why the second approach (i.e., pre-construction survey and buffer) would not reduce potentially significant direct impacts on bats. First, the measure applies only to roosts occupied by special-status bats, thus providing no protection to maternity roosts occupied by other bat species. An impact to a maternity roost of *any* bat species would constitute a significant impact because it would “impede the use of native wildlife nursery sites” (i.e., CEQA significance threshold “d”).<sup>53</sup>

Second, although bat detectors can be relatively effective in detecting bat activity, they do not identify roost locations. Furthermore, even when appropriate techniques are implemented (i.e., visually monitoring palm trees at emergence time), it is difficult to locate roosts occupied by western yellow bats.<sup>54</sup> As a result, the pre-construction survey methods required under BIO-MM-1 would not provide reliable information on yellow bat roosts that may be impacted by the Project. This issue is compounded by the DEIR’s failure to establish standards for the “qualified biologist” that would conduct the survey.

Third, BIO-MM-1 lacks the specificity needed to ensure reliable data on presence of bats in areas that would be impacted by the Project. Bat detection probabilities during acoustic surveys at a given site are known to vary depending on a range of factors, including weather conditions, sampling duration, number of observers/detectors deployed, and sensitivity/directionality of detector types.<sup>55</sup> BIO-MM-1 fails to address these variables. Importantly, the single pre-construction survey proposed in BIO-MM-1 would not be sufficient to conclude absence of bat roosts. For example, Froidevaux and others (2020) found that a minimum of three and four acoustic surveys are required to be 95% confident that a building does not host a roost of *Pipistrellus* species and *Plecotus* species, respectively.<sup>56</sup>

Fourth, the DEIR fails to explain how “netting, canvas, or similar materials” could be used to create a buffer around a maternity roost. To the contrary, these materials are used to exclude bats from their roosts—not to protect active roosts from construction activities. Furthermore, bat biologists recommend against netting because it is known to trap (or entangle) bats and birds.<sup>57</sup>

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<sup>52</sup> Presumably trees would be felled only during the daytime.

<sup>53</sup> See DEIR, p. IV.C-29.

<sup>54</sup> Western Bat Working Group. 2005 [update]. Species account for the western yellow bat. Available at: <<http://wbwg.org/western-bat-species/>>. (Accessed 6 May 2022).

<sup>55</sup> Froidevaux JSP, Boughey KL, Hawkins CL, Jones G, Collins J. 2020. Evaluating survey methods for bat roost detection in ecological impact assessment. *Animal Conservation* 23(5) 597-606.

<sup>56</sup> *Ibid.*

<sup>57</sup> Johnston D, Tatarian G, Pierson E. 2004. California Bat Mitigation Techniques, Solutions, and Effectiveness. Report to California Department of Transportation, Sacramento, California. Project Number 2394-01.

Consequently, the DEIR must disclose and analyze potentially significant impacts caused by implementation of BIO-MM-1 if netting might be installed at the Project site.

Fifth, the DEIR does not identify what would be considered a “suitable buffer,” nor does it establish performance standards BIO-MM-1. Furthermore, although BIO-MM-1 requires a report that documents “any needed maternity roost avoidance actions,” it does not require monitoring to evaluate the efficacy of those actions. As a result, the DEIR provides no assurances that BIO-MM-1 would be successful in preventing significant impacts to bats.

### **BIO-MM-2 (California Brittlebush Scrub)**

BIO-MM-2 states:

“Prior to issuance of a building permit, Harvard-Westlake School shall submit to the Department of City Planning a landscape plan or mitigation plan depicting replacement of an equivalent acreage of California brittlebush scrub removed at a 1:1 ratio. The sensitive natural community does not need to be dominated only by California brittlebush, but this species shall be prevalent within the community, and the native scrub mix proposed shall use similar species as used for the Zev Greenway restoration habitat. The replacement of sensitive natural community habitat shall be planted clustered adjacent to and contiguous with the Zev Greenway, and the locations and species shall be to the satisfaction of the Department of City Planning and in conformance with the landscape and planting guidelines in the Los Angeles River Master Plan Landscaping Guidelines and Plant Palettes. Replacement sensitive natural community habitat areas shall be planted on-site and shall be shown on the Project’s landscape plan. The restored sensitive natural community shall be monitored for five years to verify that California brittlebush scrub has been successfully restored.”

There are several problems with BIO-MM-2. First, the DEIR fails to demonstrate it would be feasible to create 0.14 acres of replacement habitat on-site and adjacent to the Zev Greenway. Most of the habitat adjacent to the Zev Greenway already consists of California brittlebush scrub (and therefore does not qualify as a potential mitigation site).<sup>58</sup> Although there are small patches of “Disturbed” and “Ornamental” vegetation along the Greenway near the Project’s southwestern boundary, it is unclear whether there would be 0.14 acres “on-site” that could be restored to California brittlebush scrub, especially given the Applicant’s plan to plant trees in that area.<sup>59</sup>

Second, the DEIR does not establish performance standards for BIO-MM-2, nor does it identify the variables that would be evaluated to determine whether the California brittlebush scrub had been “successfully restored.” As a result, the DEIR lacks assurances that BIO-MM-2 would be effective in mitigating the Project’s impacts to less-than-significant levels.

Third, BIO-MM-2 fails to incorporate a mechanism that would ensure the compensation habitat is maintained (and properly managed) in perpetuity. That is, there is not mechanism that would

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<sup>58</sup> DEIR, Figure IV.C-3.

<sup>59</sup> DEIR, Figure IV.C-5.

prevent the Applicant from removing the compensation habitat upon termination of the five-year monitoring period.

For these reasons, BIO-MM-2 does not ensure the Project's impacts to California brittlebush scrub would be mitigated to less-than-significant levels.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Cashen", with a long horizontal flourish extending to the right.

Scott Cashen, M.S.  
Senior Biologist