



1           Petitioner, CRANE BOULEVARD SAFETY COALITION (“Petitioner” or  
2 “Association”), alleges through this Verified First Amended Petition for Writ of Mandate as  
3 follows:

4           1.       This case challenges certain patterns and practices of Respondent, City of Los  
5 Angeles (“City”) that prejudicially impaired the constitutional fairness of the land use hearing  
6 conducted by the City Council. Under California constitutional case law, all property owners  
7 and tenants, and land use appellants within the potential impact area of a real estate  
8 development project are entitled to notice of each quasi-judicial hearing conducted by the City,  
9 a right to be meaningfully heard at the hearing, and to be free of any biased decision maker or  
10 process where the decision making occurs outside the required land use appeal hearing. As a  
11 result of City patterns and practices that were applied to the particular case here, the Petitioner,  
12 as land use appellant, and representing constitutionally affected persons supporting Petitioner,  
13 were denied a California due process and fair hearing.

14           2.       This case also challenges certain patterns and practices of the City to fail to  
15 enforce the plain language of the Mount Washington/Glassell Park Specific Plan (“Specific  
16 Plan”) and Los Angeles Municipal Code (“LAMC”) that requires the City to gather sufficient  
17 information regarding the lot size, the slope of the lot, and the actual dimensions of the building  
18 proposed for construction, all in order to accurately determine and apply the most restrictive  
19 floor area ratio calculation, consistent with fundamental General Plan, Specific Plan, and  
20 municipal code policies, programs, and requirements. As a result of the City patterns and  
21 practices applied in this case, the City failed to lawfully restrict the floor area ratio and  
22 independently verify the actual building dimensions on the project plans, and such prejudicial  
23 conduct violated both the LAMC and the Specific Plan.

24           3.       This case also concerns the proposed development of a house project located at  
25 464-466 Crane Boulevard, Los Angeles, CA (“Project”). According to one hearing notice  
26 issued by the City, the Project involves the “construction, use and maintenance of a new, three  
27 (3)-story, 45 feet in height, 3,633-square foot single-family dwelling with a 533-square foot  
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1 attached garage, on an 8,914.1-square foot vacant lot.” The Project is located on a never-before  
2 developed steep hillside in the named community of Mount Washington.

3 4. The escarpment area, including the two subdivision lots that solely constitute the  
4 boundaries of the Project site processed by the City, is part of a State of California mapped  
5 Earthquake-Induced Landslide Zone, a High Fire Hazard Severity Zone, and takes access from a  
6 degraded Substandard Hillside Street that runs along the crest of the hill where the Crane  
7 escarpment is located. Unlike the properties immediately adjacent, the particular lots at issue  
8 have remained undeveloped due to the severe slope, unsupported soil characteristics, and the  
9 problematic challenges to safely construct at this particular location.

10 5. The vacant site is home to rare species, the Southern California Black Walnut,  
11 that is part of open space along the Crane Boulevard escarpment. There are state trustee  
12 agencies with jurisdiction over resources on or immediately adjacent.

13 6. The City’s review of the Project was materially deficient related to the eligibility  
14 of the Project to qualify for a Categorical Exemption from the California Environmental Quality  
15 Act (“CEQA”). Therefore, judicial review of the City’s actions is necessary to assure full  
16 compliance with legal requirements.

17 **THE PARTIES**

18 7. Petitioner is an unincorporated association whose purpose is to promote the  
19 social welfare and environment in the hills of Northeast Los Angeles and in the area of the  
20 Mount Washington/Glassell Park Specific Plan, including along Crane Boulevard which is a  
21 substandard street that provides critical ingress and egress from a particularly steep escarpment  
22 on the north and east facing slopes of Mount Washington. Petitioner and those in the  
23 community who are affected by the Project, including its cumulative impacts in conjunction  
24 with other projects in Mount Washington and Glassell Park, have a direct and substantial  
25 beneficial interest in ensuring that the City complies with laws relating to environmental  
26 protection and land use. Petitioner and supporters are adversely affected by the City’s failure to  
27 comply CEQA in approving the Project. Petitioner has standing to assert the claims raised in  
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1 this Petition because Petitioner and its supporters' aesthetic, land use, and environmental  
2 interests are directly and adversely affected by Respondent's' approval of the Project.

3 8. Respondent City of Los Angeles is a charter city incorporated under the laws of  
4 the State of California. The City is the lead agency under CEQA.

5 9. Real Parties in Interest, Rachel Foullon and Ian Cooper are the owners of the two  
6 lots at 464-466 Crane Boulevard that constitute the Project site applied for and analyzed by the  
7 City. They are hereinafter referred to as "Real Parties" or "Developer."

8 10. Petitioner is ignorant of the true names and capacities of Real Parties sued herein  
9 as ROES 1-25, inclusive, and therefore sues these Real Parties by such fictitious names.  
10 Petitioner will amend this Petition to allege the true names and capacities of fictitiously named  
11 Real Parties in Interest. Petitioner is informed and believes and thereon alleges that each  
12 Respondent designated herein as a ROE has some responsibility for the events and happenings  
13 alleged in this Petition.

14 **JURISDICTION AND VENUE**

15 11. This action arises under CEQA and its implementing regulations, which are  
16 prescribed by the Secretary of the California Resources Agency to be followed by all state and  
17 local agencies when undertaking projects subject to CEQA. (Pub. Resources Code § 21000 et  
18 seq.; Cal. Code Regs., tit. 14, § 15000 et seq.) This Court has jurisdiction over the matters  
19 alleged in this Petition pursuant to Code of Civil Procedure section 1085, and Public Resources  
20 Code section 21168.5. In the alternative, this Court has jurisdiction pursuant to Code of Civil  
21 Procedure section 1094.5 and Public Resources Code section 21168. This Court also has  
22 jurisdiction over matters alleged in this Petition pursuant to Code of Civil Procedure section  
23 1094.5 Fair Hearing, LAMC sections 11.5.13, 12.21C(10), the Mount Washington/Glassell Park  
24 Specific Plan, and California Constitution, art. 1, § 7.

25 12. Pursuant to Code of Civil Procedure section 394(a) venue is proper in "the  
26 county in which the city or local agency is situated." Venue is proper in this Court because the  
27 City and the subject Project site is located in the County of Los Angeles.

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1 GENERAL ALLEGATIONS

2 The Floor Area Ratio Pattern and Practice

3 13. Prior to 1993, the year of enactment of the Mount Washington/Glassell/Park  
4 Specific Plan, hillside areas of Los Angeles had floor area limits that were regarded as too much  
5 for the steep terrain and narrow street infrastructure of hillside areas. Mount Washington and  
6 Glassell Park had particularly steep escarpments and degraded, narrow streets, and  
7 mansionization during the housing boom of the 1980s led to the appointment of an advisory  
8 committee to propose a specific plan. Consistent with the policies in the Northeast Community  
9 Plan to reduce densities in sensitive hillside and natural habitat areas, the committee  
10 recommended a floor area ratio (“FAR”) calculation method that would scale as a smaller  
11 percentage of the lot as the lot size increased. Thus, in 1993, upon its enactment, the Specific  
12 Plan restricted FAR on hillside lots within its boundaries significantly more than the Hillside  
13 Ordinance regulations found in LAMC section 12.21A.17.

14 14. The Specific Plan, Section 2 is entitled “Relationship to Other Provisions of the  
15 Los Angeles Municipal Code.” This title helps City Planners know that the rules in this section  
16 govern how the LAMC and Specific Plan are to be harmonized in their joint operation over  
17 projects reviewed under the Specific Plan.

18 15. The Specific Plan, Section 2A, provides in relevant part: “The regulations set  
19 forth in this Specific Plan are in addition to those set forth in the Los Angeles Municipal Code  
20 (LAMC), as amended . . .” This subsection makes clear that the LAMC are the default  
21 regulations to apply to any project proposed in the Specific Plan area, unless modified by a  
22 particular provision of the Specific Plan.

23 16. The Specific Plan, Section 2B, provides in relevant part: ***“Wherever this Specific***  
24 ***Plan contains provisions which require . . . more restrictive Floor Area Ratios, . . . or other***  
25 ***greater restrictions or limitations on development than would be required by the provisions***  
26 ***contained in the LAMC Chapter I, the Specific Plan shall prevail and supersede the***  
27 ***applicable provisions of the Code.*** Thus, Section 2B directed City Planners applying the  
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1 LAMC and Specific Plan to compare the FAR calculation under LAMC 12.21A.17 (Hillside  
2 Ordinance) to the FAR permitted under the Specific Plan, and once those calculations were  
3 performed, whichever one was more restrictive as to permitted FAR would be applied to a  
4 project in the Specific Plan area.

5 17. By the mid-2000s, speculative development of oversized houses, particularly in  
6 sensitive and high fire risk hillside areas remained a problem. In 2011, the City Council enacted  
7 the Original Baseline Hillside Ordinance (“Original BHO”) generally found at LAMC section  
8 12.21C.10. The Original BHO applied to all hillside areas and introduced a new way to  
9 calculate allowed FAR based upon a slope band analysis. The more steep portions of the lot  
10 might be, the less FAR was permitted. However, the Original BHO contained a number of  
11 exceptions and add-ons that generally resulted in the Specific Plan’s FAR limit still being more  
12 restrictive than that allowed by the LAMC under the Original BHO. So generally speaking,  
13 from 2011 to 2017, the City was correct in applying the Specific Plan’s FAR calculation to a  
14 project because it remained the most restrictive FAR.

15 18. Because of the excessive exceptions and loopholes in the Original BHO, in 2017  
16 the BHO was significantly amended. At that time, the definitions of floor area of a building  
17 were expanded, and most FAR exceptions were removed. The permitted FAR was still  
18 calculated using the slope band analysis method that reduces permitted floor area as the lot  
19 becomes more steep. The amended BHO is generally at the same location as the Original BHO:  
20 LAMC section 12.21C10.

21 19. Since the 2017 BHO amendments, and in particular on hillside lots with steep  
22 slopes, a comparison of the BHO slope band analysis often yields a more restrictive FAR than  
23 the calculation of the Specific Plan which is based simply on lot size. In accordance with this  
24 change, community residents noticed the City Planning Department not consistently requiring  
25 project applicants and their consultants to provide an analysis of both BHO and Specific Plan  
26 FAR calculations so that the more restrictive FAR could be applied.

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1           20.     Petitioner is informed and believes, and thereon alleges that certain project  
2 expeditors and developers interested in Mount Washington and Glassell Park began requesting  
3 or lobbying the City Planning Department to not require applicants to provide a calculation of  
4 both the BHO and the Specific Plan FAR. Petitioner is informed and believes, and thereon  
5 alleges that City Planning staff commenced simply applying the generally more generous  
6 Specific Plan FAR calculation to evaluation of project applications, not even determining if the  
7 BHO slope band analysis for a particular project site would allow less floor area to be built.

8           21.     Through numerous land use cases reviewed by community residents, City  
9 Planners were observed offering differing and inconsistent reasons why the City Planning  
10 Department was refusing to require BHO slope band analysis as part of an application within  
11 the Specific Plan area. The City's refusal to apply the BHO in the Specific Plan area is a  
12 prejudicial failure to proceed in accordance with law.

13                           **The Architect's Summary FAR Calculation Pattern and Practice**

14           22.     As the City Planning Department's failure to enforce the BHO slope density  
15 FAR calculation in Mount Washington and Glassell Park became apparent, community  
16 observers also noticed that in reviewing project applications in the Specific Plan area, the City  
17 Planners were simply pulling the building FAR calculation from the architect's summary page  
18 on the front of project plans. By simply accepting the architect's summary, without checking its  
19 accuracy against the actual building dimensions pulled from the Project's plans, the City  
20 Planning Department's practice created another point of failure in the review of projects  
21 submitted for review and approval in a Specific Plan Compliance Determination by the  
22 Planning Director.

23           23.     Petitioner is informed and believes, and thereon alleges that City Planners allow  
24 applicants and permit expeditors to submit plans where the actual building dimensions  
25 calculated from the project plans do not match the architect's calculation of floor area on the  
26 plans summary page, and this represents a potential institutional loophole for an applicant to  
27 obtain FAR he or she is not entitled to under law. Petitioner is informed and believes, and  
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1 thereon alleges that this is a pattern and practice of the City planning staff assigned to review  
2 projects for compliance with the Specific Plan. They do not undertake verification of the  
3 accuracy of the architect's calculations of FAR, and as a result, projects are at substantial risk of  
4 exceeding the FAR limits allowed by law.

5 24. The City's failure to perform or require the applicant to present verification of  
6 the FAR calculation on the architect's summary page is a failure to proceed in accordance with  
7 law because such a determination is a fundamental element of verifying that a project is in  
8 compliance with Specific Plan and LAMC requirements.

9 **City Practices Place A Prejudicial Target on Mount Washington and Glassell Park For**  
10 **Excessive Development on Sensitive Hillside**

11 25. During the few years since the amendment of the BHO, the City's pattern and  
12 practices with respect to administration of the LAMC and Specific Plan in Mount Washington  
13 has led to housebuilders, expeditors and speculators flocking to buy vacant land in the Specific  
14 Plan area and propose projects in the community at a rate much more intensely than the past.  
15 Petitioner is informed and believes, and thereon alleges that up to 150 projects are currently  
16 pending just in the Mount Washington area. Along the substandard, steep, winding, and rarely  
17 maintained Crane Boulevard in just the 300 and 400 block, the City has recently approved 8  
18 projects, three of which are currently in construction with the cumulative impacts on the  
19 community of streets choked with construction vehicles, no place for cars to pull over to allow  
20 others to pass on 20 foot wide streets, and construction crews parking illegally in red safety  
21 zones that need to remain clear for fire and emergency trucks to negotiate sharps turns in the  
22 hillside.

23 26. Meanwhile, over in other hillside areas of the City such as Hollywood Hills,  
24 Beverly Crest and other areas outside the Specific Plan, the City Planning and Building and  
25 Safety Departments are requiring BHO slope band analysis in order to determine allowable  
26 FAR for projects in those areas. Because the BHO is more strict than the Specific Plan's FAR,  
27 and the City Planning Department follows a practice of only applying the Specific Plan's  
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1 generally less strict FAR calculation, the City Planning Department has literally placed a target  
2 on the Specific Plan area where many want to now go to maximize solely market rate house  
3 sizes and profits. This would not be occurring at the magnitude it is occurring without the City  
4 Planning Department's patterns and practices in its refusal to follow the plain language of  
5 Specific Plan Section 2 A & B.

6 **City Pattern and Practice Of Drafting Land Use Appeal Ordinances To Exclude Persons**  
7 **With Constitutionally Protected Due Process Rights From A Right To Notice Of**  
8 **Constitutionally Required Hearings or To File An Appeal**

9 27. In the seminal land use case of *Horn v. County of Ventura* (1979) 24 Cal.3d 605,  
10 our Supreme Court held that in an adjudicatory or quasi-judicial approval of a development  
11 project, property owners adjacent to the project site are entitled to reasonable notice and a  
12 reasonable opportunity to be meaningfully heard before the public agency may affect property  
13 owner interests with a project approval. The Court held that the larger and more impactful the  
14 project, the wider the radius of property owners entitled to notice and right to be heard. *Id.* at  
15 618.

16 28. Petitioner is informed and believes, and thereon alleges that historically, the  
17 City's land use appeal ordinances have provided a right to a person who self identifies as  
18 aggrieved by a City decision to have a right to file a land use appeal, and to all persons within  
19 certain radius to receive notice of the hearing and right to be heard at the land use appeal  
20 hearing.

21 29. In recent years, the City Attorney has returned to City Council with draft land  
22 use appeal ordinances that purport to restrict the right of persons owning or renting property  
23 within a project's *Horn*-defined impact area to notice of decisions that would impact them,  
24 and/or restrict those persons who are allowed to file appeals to less than the group of  
25 constitutionally affected persons surrounding the project. Many of these ordinances, including  
26 the Re-Code LA, Density Bonus Appeal, the Protected Tree Ordinance, and the CEQA Appeal  
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1 ordinance contain restrictions on notice that excludes persons potentially in a project’s impact  
2 area.

3 30. State law mandates a right to appeal CEQA determinations to the elected  
4 decision making body which here is the City Council. A CEQA appeal of an individual  
5 development project is a quasi-judicial or adjudicatory proceeding where the City Council  
6 exercises discretion to apply the CEQA facts about the project to CEQA law. Thus, *Horn-*  
7 defined constitutional due process is owed for CEQA appeals of individual projects.

8 31. When the CEQA Appeal implementation ordinance was placed before the City  
9 Council for approval by the drafters in the City Attorney’s office, the City Council was asked to  
10 approve the ordinance containing this limitation of who is entitled to receive notice of the  
11 required public hearing: “*The City Council shall hold a public hearing before acting on the*  
12 *appeal. Notice of the hearing shall be given by mail at least ten days before the hearing to the*  
13 *applicant; the appellant; any person or entity that has made a request in writing to receive*  
14 *CEQA notices; and any responsible or trustee agencies.*” This language was enacted by City  
15 Council into LAMC section 11.5.13E.

16 32. This notice language severely restricts notice, excluding every property owner or  
17 tenant living within the impact radius of the project as envisioned by the Supreme Court. *Horn*  
18 at 618. Even those sharing a property line with the project are excluded from notice of the  
19 quasi-judicial hearing.

20 33. In the case of drafting the CEQA Appeal ordinance, the City’s recent pattern and  
21 practice of purposely excluding property owners and tenants from *Horn*-derived notice and right  
22 to be heard includes those at CEQA appeal hearings conducted by City Council because the  
23 ordinance systematically denies constitutionally required notice to those entitled to receive it.

24 **The City Pattern and Practice Of An Unlawful pre-PLUM Committee Process**

25 34. When a land use appeal involving a real estate project approved by the Planning  
26 Department or a planning commission, including a CEQA appeal, comes up to the City Council,  
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1 the City Clerk refers the appeal to a committee for hearing and recommendation. In Los  
2 Angeles, that committee is the Planning and Land Use Management (“PLUM”) Committee.

3 35. In a normal City, the matter would be lawfully noticed for a land use appeal  
4 hearing at the committee. The committee members would come to the hearing, conduct the  
5 hearing, hear a staff presentation about the project, hear the land use appellant’s argument and  
6 evidence, hear the applicant’s argument and evidence, listen to the public testimony and  
7 evidence of affected persons who appear to be heard, deliberate in public and vote, and make a  
8 recommendation report to City Council as to how to dispose of the appeal. At the hearing, the  
9 committee members would listen, deliberate, express their comments and positions about how  
10 to dispose of the land use appeal before the public in the open hearing.

11 36. The following allegations are made on information and belief. Petitioner’s  
12 counsel has seen emails and attachments that confirm the substance of much of these  
13 allegations, although some of those materials are currently being challenged by the City via the  
14 claw back provisions of Code of Civil Procedure section 2031.285 in unrelated litigation.  
15 Therefore, the allegations here in no way discuss the specific information the City is currently  
16 seeking to claw back in other litigation, but the allegations will generally summarize a process  
17 not previously known to the public to the extent Petitioner now understands it.

18 37. Petitioner is informed and believes, and thereon alleges that the City’s PLUM  
19 Committee does not operate like a normal city. Petitioner is informed and believes, and thereon  
20 alleges that the City has created an elaborate pre-PLUM meeting process that occurs between  
21 the time the land use appeal is referred to committee and when the public PLUM Committee  
22 meeting occurs. Petitioner is informed and believes, and thereon alleges that, in essence,  
23 contrary to the rights of land use appellants to unbiased decision makers who make their  
24 decision on the record and only after hearing the land use appeal testimony, City Council  
25 deputies act as intermediaries to casually and routinely communicate the comments and position  
26 of the Councilmember in whose district the project lies to other deputies and their  
27 Councilmembers *prior to when the public PLUM Committee Meeting is conducted*. These  
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1 activities violate the state’s opening meeting law, Government Code section 54952.2(b), which  
2 allows deputies to answer questions or provide general information “if that person does not  
3 communicate to members of the legislative body the **comments or position** of any other  
4 member or members of the legislative body.” (Emphasis added.)

5 38. Petitioner is informed and believes, and thereon alleges that this pre-PLUM  
6 process may include the City Clerk compiling all items pending or referred to the PLUM  
7 Committee as the “pre-PLUM meeting” agenda which is distributed to an unknown number of  
8 people more than a week when the public PLUM meeting is scheduled to occur.

9 39. Petitioner is informed and believes, and thereon alleges that prior to the pre-  
10 PLUM Meeting, deputies of City Councilmembers who have items, projects, or land use  
11 appeals on the upcoming PLUM Meeting agenda are expected to schedule a meeting with one  
12 of the deputies of the PLUM Committee Chair to discuss the item, project or land use appeal  
13 **including sharing comments and positions** of the Councilmember on his or her items on the  
14 agenda.

15 40. Petitioner is informed and believes, and thereon alleges that there is an in-person  
16 or virtual meeting that includes at minimum deputies of the Chair of the PLUM Committee, the  
17 City Attorney, the City Planning Department, the Chief Legislative Analyst, and the City Clerk.  
18 Petitioner is informed and believes, and thereon alleges that the PLUM Chair deputies attend  
19 the pre-PLUM meeting and oversee the meeting and share with the meeting participants the  
20 results of the meetings with other deputies of City Councilmembers with items on the agenda of  
21 the upcoming public PLUM meeting.

22 41. Petitioner is informed and believes, and thereon alleges that sometime around the  
23 pre-PLUM meeting, the Chief Legislative Analyst’s staff prepares a summary of each item on  
24 the upcoming PLUM meeting agenda, and it is called “PLUM notes for 00-00-00.docx” in a  
25 marginal header. The content of the CLA’s document is relatively objective, no different from  
26 what might be seen at a normal city where a staff analysis of items on the agenda might be  
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1 released to the public as a staff report. But the CLA’s document is marked “confidential” and at  
2 the end of each item discussion is a line drawn across the page.

3 42. Petitioner is informed and believes, and thereon alleges on the Friday before the  
4 next public PLUM Committee meeting regularly scheduled every two weeks on Tuesday  
5 afternoon, the CLA forwards to a list of PLUM Committee deputies two versions of the “PLUM  
6 notes for 00-00-00.docx”. One version is in PDF format and cannot be edited. The second  
7 version is in Word. Petitioner is informed and believes, and thereon alleges that the reason the  
8 PLUM notes are distributed in Word format is that City Councilmembers are prepared for the  
9 upcoming PLUM Committee meeting by the planning deputies editing the CLA’s “PLUM notes  
10 for 00-00-00.docx” into a briefing document where the deputy of the Councilmember shares the  
11 comments and positions of other Councilmembers including whether each Councilmember  
12 supports, opposes or wants a continuance of a land use appeal on a project in their district.

13 43. Petitioner is informed and believes, and thereon alleges that the City Clerk’s  
14 staff, perhaps with assistance from the CLA and deputies of the PLUM Committee Chair  
15 compiles a PLUM meeting script. Petitioner is informed and believes, and thereon alleges the  
16 PLUM meeting script is just as its title implies: a word-by-word scripted narrative to be read  
17 aloud by the PLUM Committee chair, the CLA analyst, the Deputy City Attorney, and the City  
18 Clerk deputy during the meeting and a detailed outline of each item for the upcoming PLUM  
19 Committee meeting. Generally speaking, each item of business on the PLUM Committee may  
20 include a brief description, names of project applicants, project appellants, which council  
21 district is involved, possible actions, recommended time limits to impose on land use appeal  
22 parties, and the recommended outcome of the hearing, like “REC: DENY APPEAL.”

23 44. Petitioner is informed and believes, and thereon alleges by the end of Monday,  
24 the day before the public PLUM Committee meeting, the deputies of each Councilmember has  
25 opened the Word version of “PLUM notes for 00-00-00.docx”, scrolled below the line inserted  
26 by the CLA after each item of business described in the document, and typed in the information  
27 the deputy has obtained through hallway conversations, meetings, phone calls, or emails/texts  
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1 exchanged with other deputies to City Council. Petitioner is informed and believes, and thereon  
2 alleges if there are seven land use appeal hearings scheduled for the public PLUM meeting, the  
3 deputies will report to their Councilmembers in these separate briefing documents for all seven  
4 of the land use appeals, what the applicable Councilmember recommends as his or her desired  
5 outcome of the land use appeal. A tradition or norm exists in the City for councilmembers to  
6 defer to the desired position of the Councilmember in whose district a real estate project is  
7 proposed, and as outside observers have noted for years, there are remarkable unanimous votes  
8 on even controversial projects because the other Councilmembers have not exercised  
9 independent judgment on each item of business -- they simply use this enormous behind-the-  
10 scenes pre-PLUM process to learn what the affected Councilmember's position is, and they join  
11 it barring unusual circumstances.

12 45. Petitioner is informed and believes, and thereon alleges that while the deputies of  
13 Councilmembers are disseminating advance comments and positions of other Councilmembers  
14 to the full PLUM Committee members, the City staff completes preparation of a PLUM  
15 meeting script that is not transmitted through the City's email server where it is archived by the  
16 City's Information Technology Agency. Instead, the PLUM meeting script is distributed  
17 through use of a cloud-based document holding place like Dropbox or Google Documents.  
18 Petitioner is informed and believes, and thereon alleges whoever is supposed to take a copy of  
19 the PLUM meeting script to the public PLUM meeting knows how to log into the cloud-based  
20 document storage location to obtain the PLUM meeting script they will read from or refer to  
21 during the PLUM to know the recommended outcomes. Petitioner is informed and believes,  
22 and thereon alleges that the recommended outcomes printed on the PLUM meeting script are  
23 the result of substantive discussions by representatives of the PLUM Committee chair, the City  
24 Attorney, the City Clerk, the Chief Legislative Analyst, and the Planning Department who  
25 attend the pre-PLUM meeting the week before.

26 46. Petitioner is informed and believes, and thereon alleges that the City's pre-  
27 PLUM process results in a massive, systematic deprivation of the constitutional rights of land  
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1 use appellants to a fair hearing because the system is designed for the exchange of information  
2 and positions of Councilmembers outside the constitutionally required public hearing room  
3 where such information is supposed to be exclusively exchanged and deliberated.

4 47. Petitioner is informed and believes, and thereon alleges that the pre-PLUM  
5 process also is a massive, systematic violation of the open meeting law of the state, specifically  
6 Government Code section 54952.2(b)(1) which provides: “A majority of the members of a  
7 legislative body shall not, outside a meeting authorized by this chapter, use a series of  
8 communications of any kind, directly or through intermediaries, to discuss, deliberate, or take  
9 action on any item of business that is within the subject matter jurisdiction of the legislative  
10 body.”

11 48. While Government Code section 54952.2(b)(2) permits City deputies to provide  
12 information or answer questions about the items of business on the upcoming PLUM meeting,  
13 that subsection absolutely and strictly forbids any sharing of individual Councilmember  
14 “comments or positions” about items of business, including and especially pending land use  
15 appeals because to share such “comments or positions” in advance out of public view is  
16 fundamentally inconsistent with the City’s constitutional obligation to conduct fair land use  
17 appeals. To the best of the knowledge of Petitioner, the City has no rules or policies to educate  
18 and enforce among City Councilmembers and deputies the information prohibitions of the open  
19 meeting law and the requirements for conducting a constitutionally fair public land use appeal  
20 hearing.

21 49. In sum, the City’s heretofore undisclosed pre-PLUM process is an elaborate  
22 dress rehearsal, and the public PLUM meeting is a cynical ballet performed by elected and  
23 appointed City public officials pursuant to a script written by the City’s bureaucrats. This is not  
24 normal.

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1     **The Individual Project And Land Use Appeal Hearing Affected By The City's Unlawful**  
2   **Patterns and Practices**

3             50.     Each and every one of the above-described pattern and practices negatively and  
4 prejudicially impaired the City's processing of the project application and land use appeal  
5 hearing process in proceedings before the City for the individual project in this case. It is  
6 literally a poster child of the City Planning Department's departure from dutifully enforcing the  
7 land use laws it is charged with enforcing, and the City Council's stunning systematic violation  
8 of constitutional hearing rights of land use appellants like Petitioner in this case.

9             51.     Prior to April 19, 2021, the Real Parties, through their architect, submitted an  
10 application and entitlement plan sets to the City Planning Department staff for review, seeking  
11 issuance of a discretionary land use entitlement known as a Specific Plan Project Compliance  
12 Determination. Because the evaluation process is discretionary, the individual project in this  
13 case is subject to CEQA environmental review unless there are appropriate facts establishing a  
14 lawful exemption from CEQA review. The plan set submitted for the Project included a  
15 standard Project summary page where the architect was supposed to provide accurate  
16 information about the Project depicted on the following pages. It included the total number of  
17 square feet the project supposedly had on Levels 1, 2 and 3. The architect's summary page  
18 information was NOT submitted under penalty of perjury.

19             52.     On April 19, 2021, the Director of Planning issued a Project Compliance  
20 Determination for the Project. The City erroneously determined that the Project was exempt  
21 from CEQA based upon a Categorical Exemption. Petitioner is informed and believes, and  
22 thereon alleges that the City Planner reviewing compliance with the FAR requirements merely  
23 relied on the numbers provided by the architect on the summary page, and did not conduct an  
24 independent verification of the actual project square footages shown on the attached plans.

25             53.     Subsequently, Petitioner filed a timely appeal of the Director of Planning's  
26 Determination including the City's determination that the Project was exempt from CEQA  
27 based upon a Categorical Exemption. Additionally, the Project was challenged as not in  
28

1 compliance with the Specific Plan, including but not limited to the FAR and failure to include  
2 any significant architectural variety as required by the Specific Plan.

3 54. A hearing on the Project appeal was scheduled before the City’s East Los  
4 Angeles Planning Commission on July 14, 2021. During the period leading up to the scheduled  
5 hearing, the Petitioner submitted substantial expert evidence that the Project lay within a State-  
6 mapped Earthquake Induced Landslide Zone and that the City’s own laws and regulations  
7 mandated that the Project must be subjected to an enhanced slope stability study of the proposed  
8 three-story pile driven structure. Emails obtained by Petitioner reveal that the immediate  
9 response of the Developer’s architect was to take an eraser to the Project plans to relabel the  
10 three-story structure as a two-story structure with the formerly designated “Art Studio and  
11 Mechanical Room” as “Basement Crawl Space” and to remove the depiction of a floor structure  
12 for the lowest level of the building. The email communications of the architect to the City  
13 failed to explain why there was still a staircase from the level above down to the lowest level,  
14 yet it was now proposed to hang in the air with no floor. Based upon the relabeled plans, the  
15 Developer and their architect asked that the City regard the structure as two-story and that the  
16 required environmental safety study would not be required.

17 55. In addition, Petitioner submitted substantial evidence and analysis demonstrating  
18 that the most restrictive FAR for the Project was the calculation generated by the BHO and not  
19 the Specific Plan. Petitioner also submitted analysis showing that the actual dimensions of the  
20 approved project plans significantly exceeded the allowable FAR under the BHO and even the  
21 less restrictive Specific Plan FAR calculation the City Planning Department was improperly  
22 applying.

23 56. In the period leading up to the July 14, 2021 Area Planning Commission  
24 meeting, the City Planning staff filed no staff report responding to the Petitioner’s appeal and  
25 supporting materials. After concerned community members appeared to testify in support of the  
26 appeal, the City staff recommended that the appeal hearing be “postponed” to an undetermined  
27 date.

28

1           57.     On December 8, 2021, the East Los Angeles Planning Commission conducted a  
2 hearing of Petitioner’s appeal of the Director of Planning’s Project Compliance Determination  
3 for the Project, including whether the Project was exempt from CEQA based upon a Categorical  
4 Exemption. At the conclusion of the hearing, the Commission took a vote which was to be  
5 reduced by the Commission staff to a written Letter of Determination.

6           58.     On December 28, 2021, the City issued the Letter of Determination of the  
7 Commission’s decision approving the Project and adopting a Notice of Exemption as the  
8 applicable environmental clearance document for the Project, even though the required  
9 environmental study to determine the feasibility and safety of the building was not attached to  
10 the revised staff report. Instead, the City Planning staff tried to support the architect’s claim  
11 that the three-story structure was only two-story. The City Planning staff went so far as to assert  
12 that the relabeled “Basement/Crawl Space” was now embedded into the hillside (presumably to  
13 support the City Planning staff’s contention the previously suspended in the air lowest level was  
14 now a basement partially embedded in the hillside.)

15           59.     Petitioner filed an appeal of the environmental determination with the City Clerk  
16 on January 11, 2022 pursuant to Public Resources Code Section 21151(c). This section of the  
17 Public Resources Code states as follows: *“If a nonelected decisionmaking body of a local lead  
18 agency certifies an environmental impact report, approves a negative declaration or mitigated  
19 negative declaration, or determines that a project is not subject to this division, that  
20 certification, approval, or determination may be appealed to the agency’s elected  
21 decisionmaking body, if any.”*

22           60.     Los Angeles Municipal Code section 11.5.13D provides: “Stay. Upon the timely  
23 filing of an appeal pursuant to Subsection C., there shall be a stay on the Project approval and  
24 any discretionary or ministerial permits issued in reliance upon the Project approval.  
25 Notwithstanding any contrary language in this Code, the time to act on any related Project  
26 approval shall be tolled until the appeal is decided by the City Council.” Under this provision,  
27 the Project approvals at the Area Planning Commission were not final until the City Council  
28

1 determined if the supporting CEQA document, the categorical exemption, was, in the opinion of  
2 City Council, in compliance with the CEQA statute.

3 61. After a choice made by the City Planning Department to delay consideration of  
4 this appeal during the pendency of COVID-19 emergency orders, on May 2, 2023, the Planning  
5 and Land Use Committee of the Los Angeles City Council conducted a hearing regarding the  
6 eligibility of the Project for an Exemption from CEQA. In the period of time leading up to the  
7 May 2, 2023 PLUM hearing date, Petitioner sent correspondence to the City Council  
8 specifically alerting it that LAMC section 11.5.13D, which purports to permit the City to give  
9 no mailed notice of the CEQA land use appeal hearing to potentially impacted property owners  
10 and tenants surrounding the project site and along Crane Boulevard, was constitutionally infirm.  
11 This notice of potential constitutional violation was ignored with City Planners citing section  
12 11.5.13D as their lawful basis to not give mailed notice to all persons surrounding the project  
13 site.

14 62. Petitioner's counsel and concerned community members submitted written  
15 materials to the Council File leading up to the May 2, 2023 PLUM Committee meeting.

16 63. Petitioner is informed and believes, and thereon alleges that the City's  
17 undisclosed pre-PLUM process unfolded behind-the-scenes leading up to the scheduled CEQA  
18 land use appeal before the PLUM Committee on May 2, 2023. Petitioner is informed and  
19 believes, and thereon alleges that the deputy to Councilmember Eunisses Hernandez had a  
20 meeting or phone call or other interaction with a deputy of PLUM Committee Chair Marqueece  
21 Harris Dawson where Councilmember Hernandez office's comments and/or position on the  
22 CEQA land use appeal was transmitted to the office of the PLUM Committee Chair. Petitioner  
23 is informed and believes, and thereon alleges that a pre-PLUM meeting was conducted by City  
24 officials as was the City's pattern and practice. Petitioner is informed and believes, and thereon  
25 alleges that the preferred outcome of the land use appeal in this case shared by the office of  
26 Councilmember Hernandez was communicated to the City officials gathered at the pre-PLUM  
27 meeting for the upcoming May 2, 2023 PLUM Committee meeting. Petitioner is informed and  
28

1 believes, and thereon alleges that the preferred outcome of the land use appeal in this case,  
2 shared by the office of Councilmember Hernandez, was also communicated by other deputies to  
3 other PLUM Committee members in their edits of the “PLUM notes for 05-02-23.docx”  
4 document sent to them by the CLA’s staff and then used to brief their own Councilmembers.

5 64. The May 2, 2023 land use appeal went forward after all the pre-PLUM process  
6 was completed. Anyone other than the applicant and appellant who wished to speak on the  
7 Project were forced into a general public speaking period at the beginning of the meeting.  
8 Finally, when Petitioner’s appeal was called, the PLUM Chair or staff informed him he would  
9 have only 3 minutes to present a land use appeal with these complex issues. Petitioner’s counsel  
10 presented relevant information and objections to the approval of the Project utilizing a Notice of  
11 Exemption based upon a Categorical Exemption, alerted the PLUM Committee to other  
12 deficiencies including the failure to give lawful notice of the hearing. The PLUM Committee  
13 voted to recommend to the full City Council that the appeal be denied and that the Project be  
14 approved using the Notice of Exemption.

15 65. The City Council, without hearing, adopted the recommendation of the PLUM  
16 Committee and denied Petitioner’s CEQA appeal on May 10, 2023.

17 66. To the knowledge of Petitioner, no Notice of Exemption was filed with the  
18 County Recorder. This action has been brought within the applicable statute of limitations for  
19 challenging a categorical exemption.

20 67. Members of Petitioner and other interested persons made oral and written  
21 comments on the Project and raised each of the legal deficiencies asserted in this petition.

22 **CEQA’S SUBSTANTIVE AND PROCEDURAL REQUIREMENTS**

23 68. California Environmental Quality Act is California's broadest environmental law.  
24 CEQA helps to guide public agencies such as the City during issuance of permits and approval  
25 of projects. Courts have interpreted CEQA to afford the fullest protection of the environment  
26 within the reasonable scope of the statutes. CEQA applies to all discretionary projects proposed  
27  
28

1 to be conducted or approved by a City, including private projects requiring discretionary  
2 government approval. See California Public Resources Code, sections 21000 – 21178.

3 69. “CEQA broadly defines a ‘project’ as ‘an activity which may cause either a  
4 direct physical change in the environment, or a reasonably foreseeable indirect physical change  
5 in the environment, and ... that involves the issuance to a person of a lease, permit, license,  
6 certificate, or other entitlement for use by one or more public agencies.’ [Citation.] The  
7 statutory definition is augmented by the [CEQA] Guidelines [Cal.Code Regs., tit. 14, § 15000 et  
8 seq.], which define a ‘project’ as ‘*the whole of an action*, which has a potential for resulting in  
9 either a direct physical change in the environment, or a reasonably foreseeable indirect physical  
10 change in the environment...’” *Tuolumne County Citizens for Responsible Growth, Inc. v. City*  
11 *of Sonora* (2007) 155 Cal.App.4th 1214, 1222 (*Tuolumne County*). This includes all phases of a  
12 project that are reasonably foreseeable, and all related projects that are directly linked to the  
13 Project. (14 Cal. Code Regs., § 15378).

14 70. A strong presumption in favor of requiring preparation of an Environmental  
15 Impact Report (“EIR”) is built into CEQA which is reflected in what is known as the “fair  
16 argument” standard, under which an agency must prepare an EIR whenever substantial evidence  
17 in the record supports a fair argument that a project may have a significant effect on the  
18 environment. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Friends of “B” St.*  
19 *v. City of Haywood* (1980) 106 Cal.App.3d 988, 1002.

20 71. “The EIR is the primary means of achieving the Legislature’s considered  
21 declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate,  
22 and enhance the environmental quality of the state.’ [Citation.] The EIR is therefore ‘the heart  
23 of CEQA.’ [Citations.] An EIR is an ‘environmental “alarm bell” whose purpose it is to alert the  
24 public and its responsible officials to environmental changes before they have reached  
25 ecological points of no return.’” *Laurel Heights Improvement Assn. v. Regents of University of*  
26 *California* (1988) 47 Cal.3d 376, 392.



1 resource of hazardous or critical concern where designated, precisely mapped, and officially  
2 adopted pursuant to law by federal, state, or local agencies.

3           b)     Cumulative Impact. All exemptions for these classes are inapplicable  
4 when the cumulative impact of successive projects of the same type in the same place, over time  
5 is significant.

6           c)     Significant Effect. A categorical exemption shall not be used for an  
7 activity where there is a reasonable possibility that the activity will have a significant effect on  
8 the environment due to unusual circumstances.

9           d)     Scenic Highways. A categorical exemption shall not be used for a project  
10 which may result in damage to scenic resources, including but not limited to, trees, historic  
11 buildings, rock outcroppings, or similar resources, within a highway officially designated as a  
12 state scenic highway. This does not apply to improvements which are required as mitigation by  
13 an adopted negative declaration or certified EIR.

14           e)     Hazardous Waste Sites. A categorical exemption shall not be used for a  
15 project located on a site which is included on any list compiled pursuant to Section 65962.5 of  
16 the Government Code.

17           f)     Historical Resources. A categorical exemption shall not be used for a  
18 project which may cause a substantial adverse change in the significance of a historical  
19 resource.

20           75.     As explained below, the City erroneously concluded that the Project was eligible  
21 for both the Class 3 and Class 32 categorical exemptions.

22           **Unusual Circumstances Renders Both Class 3 and Class 32 Exemption Unavailable**

23           76.     Both of the CEQA exemptions utilized by the City are unavailable due to  
24 “unusual circumstances.” Application of both exemptions is limited by the factors described in  
25 section 15300.2.” An exemption should be denied if one of the exceptions listed in section  
26 15300.2 of the Guidelines applies. Section 15300.2, subdivision (c), of the Guidelines provides  
27 for one such exception and states that if there is a “reasonable possibility” of a “significant  
28

1 effect on the environment due to unusual circumstances,” then the categorical exception cannot  
2 apply. A “circumstance is ‘unusual’ . . . judged relative to the typical circumstances related to  
3 an otherwise typically exempt project.” *Voices for Rural Living v. El Dorado Irr. Dist.* (2012)  
4 209 Cal.App.4th 1096, 1108–09. As pointed out by the California Supreme Court in *Berkeley*  
5 *Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105: “[A] party may  
6 establish an unusual circumstance with evidence that the project will have a significant  
7 environmental effect. That evidence, if convincing, necessarily also establishes “a reasonable  
8 possibility that the activity will have a significant effect on the environment due to unusual  
9 circumstances.”

10 77. The Association commissioned an expert report from Wilson GeoSciences Inc.  
11 and its team of Kenneth Wilson, Certified Engineering Geologist, and Ali Abdel-Haq,  
12 Geotechnical Registered Professional Engineer. The expert report concluded as follows:

13 “1) There is a reasonable possibility that the Project will have a significant  
14 Geology or Soils impact due to the circumstance that most of the Project  
15 site is located in an earthquake-induced landslide zone mapped by the  
16 California Geological Survey, this fact is not disclosed or analyzed in the  
17 two reports we reviewed, and such areas merit special investigation to  
18 protect safety of on-site residents and surrounding persons and property  
19 from landslide or collapse during strong earth movement.

20 2) There is also a reasonable possibility of a significant Geology or Soils  
21 impact due to the Project's bedrock and soil conditions because studies  
22 performed to date on only one lot do not assure that conditions remain  
23 constant across the entire property, and the data in the GeoSystems and  
24 SubSurface reports suggests bedrock may have certain unstable conditions  
25 discussed herein.

26 3) There is a reasonable possibility of a significant Geology or Soils  
27 impact because it appears the GeoSystems report performed slope stability  
28 calculations based upon a two-story structure on piles above grade without  
a lower story but the Project plans approved by the City contain a lower  
level third-story that appears to require a retaining wall adjacent to Crane  
Bldv. not examined in the GeoSystems report.”

78. Because the Project will have a significant effect on the environment the City  
cannot deem the Project exempt from CEQA. The City attempted to deflect from the criticisms

1 of the aforementioned expert report, by the conclusions were not supported by substantial  
2 evidence.

3 **The Project Does Not Meet Criteria for Class 32 Exemption**

4 79. Petitioner submitted detailed documentation to the City showing how the Project  
5 did not meet the criteria to be eligible for a Class 32 exemption under CEQA Guidelines Section  
6 15332. That Guidelines section provides that Class 32 consists of projects characterized as in-  
7 fill development meeting all of these conditions:

8 “(a) The project is consistent with the applicable general plan designation and all  
9 applicable general plan policies as well as with applicable zoning designation  
10 and regulations.

11 (b) The proposed development occurs within city limits on a project site of no  
12 more than five acres substantially surrounded by urban uses.

13 (c) The project site has no value as habitat for endangered, rare or threatened  
14 species.

15 (d) Approval of the project would not result in any significant effects relating to  
16 traffic, noise, air quality, or water quality.

17 (e) The site can be adequately served by all required utilities and public services.

18 **Note:** Authority cited: Section 21083, Public Resources Code. Reference:  
19 Section 21084, Public Resources Code.” (Emphasis added)

20 80. The administrative record must disclose substantial evidence of every element of  
21 the exemption proposed by the City. The City failed to do this.

22 **The Project is Not Consistent With All Applicable Zoning Regulations**

23 81. The proposed Project is not consistent with **all** applicable general plan policies as  
24 well as with applicable zoning designation and regulations, and therefore does not comply with  
25 CEQA Guidelines Section 15332(a). During the hearing process, substantial evidence was  
26 submitted to the record demonstrating that the architect’s summary of the floor area of the  
27 structure was not consistent with the floor area that could be calculated from the overall  
28

1 dimensions of each floor of the Project plans on the pages behind the architect's title/summary  
2 page of the plans. Additionally, there was substantial evidence that the City Planning  
3 Department refused to apply the most restrictive floor area calculated for the Project site under  
4 the Los Angeles Municipal Code.

5 82. The floor area calculations on the front of the plans for the Project were  
6 passively used by City Planners in the Project description and analysis without independent  
7 verification of their accuracy. There is one calculation under the Specific Plan and one under  
8 something called "LAMC" but it is not based upon the regulations of the Baseline Hillside  
9 Ordinance ("BHO").

10 83. In both of these summary calculations, that do not show the calculations used to  
11 derive the numbers, do not include any of the non-habitable areas of the building (e.g.  
12 stairwells, mechanical room, exterior walls, etc.) as required by both the Specific Plan and the  
13 BHO. The Specific Plan has always counted as part of the Floor Area calculation ALL of the  
14 area "within the exterior walls" of the buildings.

15 84. The Mount Washington/Glassell Park Specific Plan provides:

16 **"Floor Area:** Notwithstanding LAMC Section 12.03, Floor Area is that  
17 area in square feet confined within the exterior walls of a building of a  
18 One-Family Project, including the area of stairways, shafts, covered  
19 automobile parking areas and basement storage areas, and excluding  
20 uncovered outdoor decks."

21 85. The plans for the Project show a three level building with the basic dimensions  
22 of the exterior walls as: 30' deep on the north side, on the east side 62'-8.5" (62.7') wide and  
23 52'-4" (52.33') on the west side. The south side angles to make a triangular portion to otherwise  
24 a rectangular box. Level 2 and 3 are exactly these dimensions and Level 1 is somewhat shorter  
25 due to the topography of the site. Level one measures: 21' deep by 62'-8.5" by 52'-4".

26 86. The areas for each level including all area within the exterior walls is then easily  
27 calculated as (the rectangle minus the triangle that forms the south side):

28 Level 1:  $(21 \times 62.7) - [.5 \times (62.7 - 52.33) \times 21] = 1,253 \text{ sq. ft.}$

Level 2:  $(30 \times 62.7) - [.5 \times (62.7 - 52.33) \times 30] = 1,726 \text{ sq. ft.}$

Level 3:  $(30 \times 62.7) - [.5 \times (62.7 - 52.33) \times 30] = 1,726 \text{ sq. ft.}$

1           87.     Based upon the Specific Plan definition set forth above, the total proposed Floor  
2 Area for the project, **taken from the plans themselves, and not from the summary on the**  
3 **front of the plans**, is: 4,704 sq. ft. Thus, the assertion that the total floor area of the proposed  
4 house is 3,633 sq. ft. is not correct.

5           88.     The LAMC Section 12.03 definition of floor area excludes non-habitable areas  
6 and does not include the area of the exterior walls. But in 2017 the City adopted modifications  
7 to the BHO which added the definition for Residential Floor Area which, like the Specific Plan,  
8 does not exempt non-habitable areas for hillside projects except some limited amounts for  
9 parking, accessory buildings, and basements. The BHO definition of Residential Floor Area of  
10 the LAMC now reads in part:

11  
12                   **“FLOOR AREA, RESIDENTIAL. (Amended by Ord. No. 184,802,**  
13                   **Eff. 3/17/17.)** The area in square feet confined within the exterior walls of  
14                   a residential or non-residential Building on a Lot in an RA, RE, RS, or R1  
15                   Zone.”

16           89.     Thus, in 2017, even the BHO’s definition of floor area was modified to generally  
17 align with the Specific Plan’s definition enacted in 1993 (the City stopped excluding portions of  
18 hillside buildings from the floor area calculation). Under both laws, the floor area is generally  
19 measured using the simple exterior wall measurements. This is more simple and streamlined  
20 for City officials to review for accuracy, and assure compliance with the law.

21           90.     In this firm’s July 6, 2021 Initial Submission correspondence, we showed  
22 calculations of the maximum allowed Floor Areas as prescribed by the Specific Plan and BHO.  
23 We agreed with the City and Applicant that the maximum allowable floor area square footage  
24 calculated for the Project under the Specific Plan is 3,743 sq. ft. However, we also performed a  
25 slope band analysis using data systems available on the City’s website, we showed our work in  
26 detail, and even after granting the 200 sq. ft. exemption for garage floor area permitted under  
27 the BHO in hillside areas, the maximum floor area allowed under the BHO was 2,989 sq. ft.  
28

1 91. Based upon these calculations, the records before the Commission establish these  
2 facts:

3 Actual house floor area as measured along exterior walls under both  
4 Specific Plan (Specific Plan excludes only outside uncovered decks which  
5 do not exist on the plans for this house so the Floor Area will be the same  
as BHO), and BHO definitions since 2017: 4,704 sq. ft.

6 92. Such plans objectively exceed the maximum allowable floor area under both  
7 laws, and by significant amounts:

8 Specific Plan: 4,704 (House FAR) – 3,743 (Specific Plan Maximum) =  
960 sq. ft. over

9 BHO: 4,704 (House FAR) – 2,989 (BHO Slope Band Maximum) = 1,716  
10 sq. ft. over

11 Based upon these calculations, the authorized floor area ratios are:

12 Specific Plan allowed FAR: 3,743 / 8,914 (lot area) = .42

13 BHO allowed FAR: 2,989 / 8,914 = .34

14 Project as actually proposed: 4,704 / 8,914 = .53

15 93. Section 2 of the Specific Plan mandates that City officials determine and apply  
16 the LAMC containing the BHO ratio, unless the Specific Plan ratio is more restrictive. Because  
17 the BHO maximum FAR ratio over the site is .34 and the Specific Plan maximum FAR ratio is  
18 .42, the more restrictive BHO maximum FAR of 2,989 sq. ft. must be enforced under the plain  
19 language of Section 2.

20 94. On this basis, the proposed house at 4,704 sq. ft. is over the maximum allowable  
21 floor area of 2,984 sq. ft. Even if the City's faulty assertion that the house measures only 3,633  
22 sq. ft. applied, which it does not, the proposed house remains over the maximum allowable floor  
23 area of 2,984 sq. ft. As a result, the Project is not consistent with all applicable zoning  
24 regulations and therefore the City cannot deem the Project as a Class 32 urban infill  
25 development.

#### 26 **The Project Has Value for Rare Species**

27 95. The "urban infill" exemption is reserved for environmentally benign projects. In  
28 order to qualify for this exemption, a public agency must conclude that the "project site has no  
value, as habitat for endangered, rare or threatened species." Cal. Code Regs. tit. 14 § 15332.

1 The City has failed to acknowledge that the Southern California Black Walnut (“Walnut”)  
2 meets the criteria to be considered “rare” under CEQA Guidelines Section 15380 subdivision  
3 (b). The California Department of Fish and Wildlife (“CDFW”), a trustee agency, has  
4 concluded that the Walnut may meet the definition of a “rare, threatened or endangered  
5 species.” CDFW has published a document entitled “*Protocols for Surveying and Evaluating*  
6 *Impacts to Special Status Native Plant Populations and Sensitive Nature Communities.*” CDFW  
7 states in that document that plants tracked by the California Natural Diversity Database and  
8 California Native Plant Society as California Rare Plant Rank 3 or 4 may meet the definition of  
9 rare or endangered under CEQA Guidelines Section 15380, subdivisions (b) and (d) and warrant  
10 consideration under CEQA on the basis of declining trends, recent taxonomic information and  
11 other factors.” Id.

12 96. Southern California Black Walnut trees are included in the City CEQA  
13 Thresholds Guide’s “Sensitive Species Compendium” as shown below. The status of this tree is  
14 listed as “4” – which means “Plants of limited distribution - a watch list.” A footnote describing  
15 this species category is included that states:

16 Very few of the plants constituting List 4 meet the definitions of Section  
17 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067  
18 (California Endangered Species Act) of the California Department of Fish  
19 and Game Code, and few, if any, are eligible for listing. Nevertheless,  
20 many of them are significant locally, and the [Department of Fish and  
21 Game] recommends that List 4 plants be evaluated for consideration  
22 during preparation of environmental documents relating to CEQA. This  
23 may be particularly appropriate for the type locality of a List 4 plant, for  
24 populations at the periphery of a species’ range or in areas where the taxon  
25 is especially uncommon or has sustained heavy losses, or for populations  
26 exhibiting unusual morphology or occurring on unusual substrates.”  
27  
28

Exhibit C-7, continued  
SENSITIVE SPECIES COMPENDIUM - CITY OF LOS ANGELES

SCIENTIFIC NAME	COMMON NAME	STATUS	ZONE *	HABITAT
<b>Plants (Con't)</b>				
<i>Deinandra minor</i> ( <i>Hemizonia parryi australis</i> )	southern tarplant	1B	Unknown	ET, GL, VP
<i>Dichondra occidentalis</i>	western dichondra	4	4	CH,OW,CS, GL
<i>Dithyrea maritima</i>	beach spectacledpod	ST, 1B	4	CD,CS
<i>Dodecahema leptoceras</i>	slender-horned spinyflower	SE, FE, 1B	1	AF,CH
<i>Dudleya b. blochmaniae</i>			3	CS,CB,CH, GL
<i>Dudleya cymosa marcescens</i>		1B	3	CH
<i>Dudleya cymosa ovatifolia</i>			3,4	CH,CS
<i>Dudleya multicaulis</i>			2	CH,CS,GL
<i>Dudleya virescens</i>			4	CH,CS
<i>Erysimum insulare suffrutescens</i>	suffrutescens wallflower	4	unknown	CB,CD,CS
<i>Fremontodendron mexicanum</i>	Mexican flannelbush	SR, FE, 1B	1,2,3	MF,CH,OW
<i>Galium angustifolium gabrielense</i>	San Antonio Canyon bedstraw	4	1	MF
<i>Galium cliffortioides</i>	Santa Barbara bedstraw	4	2,4	OW
<i>Galium johnstonii</i>	Johnston's bedstraw	4	unknown	MF
<i>Goodmania luteola</i>	golden goodmania	4	Unknown	DW,PL,GL
<i>Helianthus nuttallii parishii</i>	Los Angeles sunflower	1A	3	CM,FM
<i>Heuchera abramsii</i>	Abram's alumroot	4	Unknown	MF
<i>Heuchera elegans</i>	urn-flowered alumroot		Unknown	MF
<i>Hulsea vestita gabrielensis</i>	San Gabriel Mtns. sunflower	4	1	MF
<i>Juglans c. v. californica</i>	So. Cal. black walnut	4	1,2,3	CH,OW,AF
<i>Juncus acutus leopoldii</i>	southwestern spiny rush	4	4	CD,CM
<i>Juncus duranii</i>	Duran's rush	4	Unknown	MF
<i>Lasthenia glabrata coulteri</i>	Coulter's goldfields	1B	Unknown	CM,PL,VP
<i>Lepechinia fragrans</i>	fragrant pitcher sage	4	3	CH
<i>Lilium humboldtii ocellatum</i>	ocellated Humboldt lily	4	1,2,3	CH,OW,CO
<i>Linanthus orcuttii</i>	Orcutt's linanthus	1B	Unknown	CH,MF
<i>Lupinus elatus</i>	silky lupine	4	Unknown	MF
<i>Lupinus excubitus v. johnstonii</i>	interior bush lupine	4	Unknown	MF
<i>Lupinus peirsonii</i>	Peirson's lupine	1B	Unknown	CH,CS,RW
<i>Malacothamnus davidsonii</i>	Davidson's bush mallow	1B	1,3	CS,RW
<i>Microseris douglasii v. platycarpa</i>	small-flowered microseris	4	Unknown	OW,CS,GL
<i>Monardella cinerea</i>	gray monardella	4	Unknown	MF

Refer to Exhibit C-1

Figure 10 – Markup of Sensitive Species Compendium for L.A. CEQA Thresholds Guide

97. A marked-up screenshot of the Sensitive Species Compendium Key Chart from the Thresholds Guide is shown below:

Channel Law Group, LLP  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

**Exhibit C-7, continued**  
**SENSITIVE SPECIES COMPENDIUM - CITY OF LOS ANGELES**

**KEY (continued)**

<b>California Native Plant Society (CNPS)</b>	
1A	Plants presumed extinct in California <sup>3</sup>
1B	Plants that are rare, threatened, or endangered in California or elsewhere <sup>3</sup>
2	Plants that are rare, threatened, or endangered in California, but more common elsewhere <sup>3</sup>
3	Plants about which more information is needed - a review list <sup>4</sup>
4	Plants of limited distribution - a watch list <sup>5</sup>
<b>Habitat Code Designations - California Natural Diversity Database (CNDDB)</b>	
AF	Alluvial Fan Sage Scrub
BW	Brackish Water
CB	Coastal Bluff Scrub
CD	Coastal Dunes
CH	Chaparral
CL	Coastal Lagoon

<sup>3</sup> All of the plants constituting Lists 1A, 1B, and 2 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for listing. According to the DFG, if the taxa on List 1A are rediscovered, they should be fully considered during preparation of environmental documents relating to CEQA. List 1B and 2 plants should be fully considered during preparation of environmental documents relating to CEQA.

<sup>4</sup> Some of the plants constituting List 3 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for listing. The DFG recommends that List 3 plants be evaluated for consideration during preparation of environmental documents relating to CEQA.

<sup>5</sup> Very few of the plants constituting List 4 meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and few, if any, are eligible for listing. Nevertheless, many of them are significant locally, and the DFG recommends that List 4 plants be evaluated for consideration during preparation of environmental documents relating to CEQA. This may be particularly appropriate for the type locality of a List 4 plant, for populations at the periphery of a species' range or in areas where the taxon is especially uncommon or has sustained heavy losses, or for populations exhibiting unusual morphology or occurring on unusual substrates.

The Southern California Black Walnut is a "plant of limited distribution" that "should be evaluated under CEQA."

**Figure 11 – Markup Sensitive Species Compendium Key Chart for L.A. CEQA Thresholds Guide**

98. Additionally, the City’s own Conservation Element acknowledges that species on CDFW’s list of “Species of Special Concern” are considered “rare.” The Conservation Element includes the following definition: “Species of Special Concern. Rare, very restricted distribution, declining or at a critical life cycle stage when residing in California.” The Walnut is on CDFW’s “Special Plants List.” The walnut is listed on page 92 of the Special Plants List having a California Rare Plant Rank (CRPR) of 4.2. CRPR 4 means Limited Distribution / Watchlist, and the .2 (of 4.2) means moderately threatened, with 20–80% of its occurrences threatened.

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1           99. Further, the City adopted the following finding when the Walnut was added to  
2 the list of locally protected species in 2006 via Ordinance 177404.

3                   “In accordance with Charter Section 556, the proposed ordinance  
4 (Appendix A) is in substantial conformance with the purposes, intent, and  
5 provisions of the General Plan. It implements Policy 3 of Section 6:  
6 Endangered Species of the Conservation Element of the General Plan by  
7 revising regulations concerning endangered species; and Policy 4 of  
8 Section 10: Habitats of the Conservation Element of the General Plan by  
9 creating legislation that encourages and facilitates protection of local  
10 native plant and animal habitats. It also implements the California  
11 Environmental Quality Act by designating *Juglans californica* var.  
12 *californica* as a protected species, consistent with the recommendations of  
13 the California Native Plant Society (6th. Inventory of Endangered Species,  
14 RED Code 4-4-4) that this ‘locally significant’ species be ‘evaluated for  
15 consideration during the preparation of environmental documents relating  
16 to CEQA.’”

12           100. The City Council adopted the Planning Commission’s findings. Policy 3 of  
13 Section 6: Endangered Species of the Conservation Element of the General Plan states:

14                   “Policy 3: continue to support legislation that encourages and facilitates  
15 protection of endangered, threatened, sensitive and rare species and their habitats  
16 and habitat corridors.”

16           101. Finally, Dr. Travis Longcore, an environmental scientist who teaches at UCLA,  
17 has concluded that the Walnut is indeed considered a “rare” species. Dr. Longcore has authored  
18 an article entitled Conservation of California Walnut in the Eastern Santa Monica Mountains.  
19 Dr. Longcore states as follows:

20                   “California walnut (*Juglans californica*) is recognized by the State of California  
21 as a rare species and is at risk of becoming endangered if the trends of habitat  
22 loss for the species continues. Yet, over the past three years, the City of Los  
23 Angeles has permitted the removal of this species at the rate of one mature tree  
24 every 7.2 days. 1 Although the City has a native tree protection ordinance, these  
25 trees are routinely permitted for removal to make way for new construction and  
26 expansion of existing homes.

25           102. Further, the United States Department of Agriculture’s Index of Species  
26 Information notes that the “Southern California walnut woodland is severely threatened by  
27 urbanization.” Also, a leading researcher, Dr. Ronald Quinn, has stated the following: “It is  
28

1 important to recognize that California walnuts are rapidly approaching the status of a custodial  
2 species, which I define as a species with remnant natural populations found only within reserves  
3 of limited size, where protection of the population is an explicit management goal. Free ranging  
4 herds of American bison (*Bison bison*) in natural parks are an example of a custodial species.”  
5 Finally, even the California Department of Transportation (Caltrans) has acknowledged that the  
6 Southern California Black Walnut should be considered under CEQA. For example, in a  
7 Supplemental EIR conducted in 2016 for a highway project in Southern California, Caltrans  
8 stated the following:

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

17 Draft Supplemental Environmental Impact Report/Environmental Impact  
18 Statement and Section 4(f) Evaluation for SR-241/SR-91 Tolloed Express  
19 Lanes Connector Project.

20 103. The Project site undeniably has “value as habitat” for the Sothern California  
21 Black Walnut as evidenced by the fact that there are four such trees located on the property, a  
22 fact noted in the Staff Report prepared for the Project. Moreover, the Project requires the  
23 removal of a walnut tree as part of the Project. In sum, the Project site has “value as habitat” for  
24 a rare species and therefore the Project is not eligible for the Class 32 exemption. The City’s  
25 determination otherwise is not supported by substantial evidence.

26 104. Moreover, the proposed Project is not eligible for a Class 32 Categorical  
27 Exemption pursuant to CEQA Guidelines Sections 15332(b) due to cumulative impacts. During  
28 the administrative process, expert evidence was submitted that Project site presented significant  
construction challenges because construction equipment would have to staged on Crane  
Boulevard impairing safety in a High Fire Hazard Severity Zone. Petitioner explained that

1 multiple projects of the same type were being constructed at the same time in close proximity to  
2 one another. Petitioner submitted detailed letters to the City explaining how the Project was not  
3 eligible for the Class 32 exemption.

4 105. *Procedural Violations of CEQA.* The City committed several procedural errors in  
5 the processing of the proposed project. First, the City changed the Categorical Exemption(s)  
6 claimed for the project in response to public comments. Second, the City failed to address the  
7 whole of the action. In so doing, the City placed undue burdens on members of the public  
8 seeking to ensure that the impacts of the proposed project are properly considered and  
9 mitigated. The record contains substantial evidence that retaining walls for degraded Crane  
10 Boulevard and possibly the third and lowest level of the structure are required but they were not  
11 analyzed in the Soils and Geology Report reviewed by the City. When this was brought to the  
12 City's attention it ignored this evidence.

13 **The Project is Not Exempt from CEQA Because the City Has Proposed Mitigation**  
14 **Measures in the Form of Specialized Conditions of Approval for the Project**

15 106. Significantly, in evaluating whether a categorical exemption may apply, the City  
16 may not rely on mitigation measures as a basis for concluding that a project is categorically  
17 exempt, or as a basis for determining that one of the significant effects exceptions does not  
18 apply. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th  
19 1098.

20 107. The Grading Division has issued a Geology and Soils Report Approval Letter for  
21 the Project. This letter contains numerous conditions of approval. Many of these conditions are  
22 not simply applications of the California Building Code or existing City of Los Angeles  
23 regulations. The fact that the Geology Report contains specialized mitigation measures renders  
24 the application of a categorical exemption in appropriate and unlawful.

1 **The Project is Also Not Exempt from CEQA Because the City Seeks to Defer Application**  
2 **of Mitigation Measures to Another Date**

3 108. Additionally, many of the conditions of approval in the Geology and Soils  
4 Report Approval Letter simply “kick the can” down the road and defer required environmental  
5 analysis to another date. Further, at the hearing before the Planning and Land Use Management  
6 Committee a planning deputy stated that a key community concern regarding geologic safety  
7 would be addressed later – at the time that the building permits were issued by LADBS. This  
8 does not comply with CEQA in connection with a discretionary permit approval. Analysis  
9 cannot simply be deferred.

10 109. Conditioning a project on another agency's future review of environmental  
11 impacts, without evidence of the likelihood of effective mitigation by the other agency, is  
12 insufficient to support a determination by the lead agency that potentially significant impacts  
13 will be mitigated. *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296. Further,  
14 requiring formulation of mitigation measures at a future time violates the rule that members of  
15 the public and other agencies must be given an opportunity to review mitigation measures  
16 before a project is approved. PRC § 21080, subd. (c)(2)). *See League for Protection of Oakland*  
17 *Architectural & Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Gentry v.*  
18 *City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Quall Botanical Ganlens Found., Inc. v.*  
19 *City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v.*  
20 *Cnty. of El Dorado* (1990) 225 Cal.App.3d 872, 884; *Sundstrom v. Cnty. of Mendocino*, supra,  
21 202 Cal.App.3d at p. 306, (condition requiring that mitigation measures recommended by future  
22 study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and  
23 flooding impacts was improper). Moreover, a condition that requires implementation of  
24 mitigation measures to be recommended in a future study may conflict with the requirement that  
25 project plans incorporate mitigation measures before a proposed negative declaration is released  
26 for public review. PRC § 21080, subd. (c)(2); 14 Cal Code Regs § 15070(b)(1). Studies  
27 conducted after a project's approval do not guarantee an adequate inquiry into environmental  
28

1 effects. Such a mitigation measure would effectively be exempt from public and governmental  
2 scrutiny.

3 110. For the aforementioned reasons, Respondent committed a prejudicial abuse of  
4 discretion and failed to proceed in a manner required by law by failing to consider Petitioner’s  
5 appeal and conduct the required additional environmental analysis under CEQA before  
6 approving the Project.

7  
8 **SECOND CAUSE OF ACTION**

9 **(Violation of Los Angeles Municipal Code 11.5.13)**

10 111. Petitioner re-alleges and incorporates by reference the preceding paragraphs of  
11 this Petition.

12 112. The City’s CEQA Appeal Ordinance, codified at 11.5.13, mandates that the City  
13 provide notice to any trustee agencies. Los Angeles Municipal Code Section 11.5.13(E) states  
14 as follows:

15 “The City Council shall hold a public hearing before acting on the appeal.  
16 Notice of the hearing shall be given by mail at least ten days before the  
17 hearing to the applicant; the appellant; any person or entity that has made  
18 a request in writing to receive CEQA notices; and *any responsible or trustee agencies.*” (emphasis added).

19 113. The City failed to provide notice of the CEQA Appeal hearing to the California  
20 Department of Fish and Wildlife, a trustee agency, as required by local law.

21 114. CDFW is a state agency under the California Natural Resources Agency. Fish &  
22 G. Code, § 700, subd. (a). The Department will exercise jurisdiction by law over natural  
23 resources affected by the Project. A “trustee agency” is defined in Public Resources Code as “a  
24 state agency that has jurisdiction by law over natural resources affected by a project, that are  
25 held in trust for the people of the State of California.” Pub. Resources Code, § 21070. The  
26 CEQA Guidelines state that a trustee agency "means a state agency having jurisdiction by law  
27 over natural resources affected by a project which are held in trust for the people of the State of  
28 California. Trustee agencies include: (a) The California Department of Fish and Game with

1 regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to  
2 game refuges, ecological reserves, and other areas administered by the department." 14 Cal.  
3 Code Regs., § 15386. The Department has been tasked with a key role in reviewing  
4 environmental documents to assess biological impacts to fish and wildlife resources. Fish and  
5 Game Code section 1802 states as follows: "The Department has "jurisdiction over the  
6 conservation, protection, and management of fish, wildlife, native plants, and habitat necessary  
7 for biologically sustainable populations of those species. The department, as trustee for fish and  
8 wildlife resources, shall consult with lead and responsible agencies and shall provide, as  
9 available, the requisite biological expertise to review and comment upon environmental  
10 documents and impacts arising from project activities, as those terms are used in the California  
11 Environmental Protection Act (Division 13 (commencing with Section 21000) of the Public  
12 Resources Code)."

13 115. The City cannot claim there are no natural resources affected by the Project.  
14 There is undisputed evidence in the record that several Southern California Black Walnut are  
15 located on the property and that the Project will remove one such walnut. The City cannot  
16 claim there are no *significant* impacts and use that as a basis not to consult or notify a trustee  
17 agency. In *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1387, the court stated as follows:  
18 "We conclude that natural resources can be "affected by" a project, and hence the lead agency  
19 may have duties toward "trustee agencies," even if the lead agency believes the project will  
20 have no significant effect on the environment. This broad construction of "trustee agency"  
21 serves the statutory purpose of fostering interagency consultation. Potential trustee agencies  
22 should have input at an early stage in the process into the question of whether the project affects  
23 resources within their jurisdiction, and hence into the very question of whether they are, in fact,  
24 trustee agencies." The City should be well aware that it not only has a duty to notify trustee  
25 agencies but to consult with them as well. The City just recently adopted a motion  
26 acknowledging the Santa Monica Mountains Conservancy, another state agency, as a trustee  
27 agency and requiring consultation.  
28



1 calculation as a matter of policy, which was an admission it was not done in this case. By  
2 refusing to verify if the architect’s summary and total square footage calculation is accurate, the  
3 City’s pattern and practice substantially increases the risk that the City will approve project  
4 plans that do not conform to the FAR limits allowed by law. This action was also a failure to  
5 proceed in accordance with law.

6 120. As set forth in detail previously, the actual dimensions of the building shown on  
7 the plans in the record calculate out to a square footage number that exceeds the square footage  
8 number listed by the architect on his summary page. When the accurate calculation of the  
9 building’s square footage is determined, it exceeds both the more restrictive FAR limit of the  
10 BHO calculation and even the more permissive FAR limit of the Specific Plan calculation. In  
11 other words, the project plans themselves are substantial evidence that the Project exceeds any  
12 possibly applicable FAR standard. This action was also a failure to proceed in accordance with  
13 law.

14 121. As set forth in the record in this case, professional architect Fran Offenhauser,  
15 who has many years of experience in City of Los Angeles design projects, submitted a report to  
16 the East Los Angeles Planning Commission analyzing the Project’s lack of compliance with  
17 even the most basic architectural variety requirements of the Specific Plan. The Real Parties  
18 offered nothing in rebuttal.

19 122. At the hearing before the East Los Angeles Planning Commission, the President  
20 of the Commission conceded that he did not care much for the Project’s design, but then he  
21 shrugged his shoulders saying “we’re not in a design excellence competition here tonight.”  
22 However, that was prejudicially incorrect. The Specific Plan sets standards that the  
23 discretionary decision maker was obligated to enforce. Having no expert evidence showing the  
24 Project complied with Specific Plan architectural standards, and having refused to even engage  
25 the subject at the only appeal hearing where it was supposed to be addressed, the City also  
26 failed to proceed in accordance with law.

27  
28



1 traffic and air emissions, were owed constitutional due process rights of notice and a  
2 meaningful opportunity to be heard to challenge grant of the applicant’s proposed subdivision  
3 project and the adequacy of the environmental review. *Horn* at 612-615. The petitioner  
4 landowner in the *Horn* case owned an adjacent parcel of land, and was found to have standing  
5 to allege that he and all other nearby landowners received no notice or opportunity to be heard.  
6 *Id.* at 619 (“the complaint avers that no prior notice or hearing had previously been given to any  
7 affected landowner, or to plaintiff or his predecessor.”)

8 127. In analyzing the territorial scope of the right to due process as an affected  
9 landowner, the California Supreme Court emphasized that the right to due process expands in  
10 land use and environmental matters with the magnitude of the project and its potential impacts  
11 on a widening area of affected landowners. *Horn* at p. 618 (“depending on the magnitude of the  
12 project, and the degree to which a particular landowner's interests may be affected, acceptable  
13 techniques [of notice of a right to be heard] might include notice by mail to the owners of record  
14 of property situate within a designated radius of the subject property, or by the posting of notice  
15 at or near the project site, or both. Notice must, of course, occur sufficiently prior to a final  
16 decision to permit a "meaningful" predeprivation hearing to affected landowners”). Our  
17 Supreme Court emphasized the importance of the notice sufficiently prior to the hearing in  
18 order to allow affected landowners to prepare evidence and testimony to present to the decision  
19 maker so that it would be “meaningful.” The larger the project, the larger the number of  
20 affected individuals whose property or other substantial rights could be impacted, and such  
21 individuals, distinct from others further away from the project site who may only have statutory  
22 Brown Act public comment rights, have a constitutionally protected right to appear at the  
23 hearing and be allowed meaningful time to present the testimony and evidence they were  
24 constitutionally required to be invited by the public agency to have an opportunity to present.

25 128. In *Horn*, the California Supreme Court specifically observed that in conducting  
26 an adjudicatory or quasi-judicial hearing the ability of affected landowners to organize  
27 themselves to petition the government, present testimony and evidence, and turn out in numbers  
28

1 could shape the ultimate decision. “Resolution of these issues [of the merits of a subdivision  
2 map] involves the exercise of judgment, and the careful balancing of conflicting interests, the  
3 hallmark of the adjudicative process. **The expressed opinions of the affected landowners**  
4 **might very well be persuasive to those public officials who make the decisions, and affect**  
5 **the outcome of the subdivision process.”** (Emphasis added.) Id. at 615. In other words, in  
6 California a “meaningful” hearing is one where the affected landowners, who presumably  
7 received a notice of hearing (an invitation to present oral testimony and evidence before a  
8 decision is made), is entitled to a meaningful opportunity to be heard at the oral hearing before  
9 the public officials and try to affect the outcome of the adjudicative process.

10 129. In California, such procedural due process is owed not only to landowners but to  
11 affected tenants of surrounding properties. *Pillsbury v. South Coast Regional Community* (1977)  
12 71 Cal.App.3d 740, 750-755 (notice required for neighbors of project, not only landowners but  
13 also residents whether they own property or not if they could be affected by the project).

14 130. Just a few months after deciding *Horn*, our Supreme Court held in *People v.*  
15 *Ramirez* (1979) 25 Cal.3d 260, 269 that California due process required a dignitary interest not  
16 recognized in federal law: “More specifically, identification of the dictates of due process  
17 generally requires consideration of (1) the private interest that will be affected by the official  
18 action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and  
19 the probable value, if any, of additional or substitute procedural safeguards, (3) **the dignitary**  
20 **interest in informing individuals of the nature, grounds and consequences of the action**  
21 **and in enabling them to present their side of the story before a responsible governmental**  
22 **official**, and (4) the governmental interest, including the function involved and the fiscal and  
23 administrative burdens that the additional or substitute procedural requirement would entail.”  
24 (Emphasis added.) In recognizing under California law a “dignitary interest,” our Supreme  
25 Court departed from federal case precedent. California requires adjudicative hearings to be  
26 conducted so that persons with constitutional interests at stake are treated with dignity.

1           131. The meaning of the dignitary interest is found also in the Ramirez opinion: “[w]e  
2 therefore hold that the due process safeguards required for protection of an individual's statutory  
3 interests must be analyzed in the context of the principle that freedom from arbitrary  
4 adjudicative procedures **is a substantive element of one's liberty.** [Cite omitted.] This  
5 approach presumes that when an individual is subjected to deprivatory governmental action, **he**  
6 **always has a due process liberty interest both in fair and unprejudiced decision-making**  
7 **and in being treated with respect and dignity.”** *Ramirez* at 268. Our Supreme Court  
8 criticized federal constitutional precedents in failing to require treatment of affected persons  
9 with dignity: “The federal approach also undervalues the important due process interest in  
10 recognizing the dignity and worth of the individual by treating him as an equal, fully  
11 participating and responsible member of society. [Citations omitted.] ‘For government to  
12 dispose of a person's significant interests without offering him a chance to be heard **is to risk**  
13 **treating him as a nonperson, an object, rather than a respected, participating citizen.**’  
14 [Citation omitted.] Thus, even in cases in which the decision-making procedure will not alter  
15 the outcome of governmental action, due process may nevertheless require that certain  
16 procedural protections be granted the individual in order to protect important dignitary values,  
17 or, in other words, ‘to ensure that the method of interaction itself is fair in terms of what are  
18 perceived as minimum standards of political accountability -- of modes of interaction which  
19 express a collective judgment that human beings are important in their own right, and that they  
20 must be treated with understanding, respect, and even compassion.’ [Citations omitted.]”

21           132. Thus, in assessing whether the procedural process used by a public agency was a  
22 “mode of interaction” that meets “minimum standards of political accountability” that assured  
23 those with constitutionally protected dignity interests were identified as such, accorded a  
24 respectful hearing where they were given a reasonable amount of time to testify and provide  
25 evidence/argument, and were in fact respectfully listened to and the decision making was based  
26 upon the record and not extraneous matters, a reviewing court must examine the procedural  
27 rules and mechanisms in place to enforce this particularized Californian dignitary requirement.  
28

1           133.    Regardless of whatever process a public agency may adopt, it is required to  
2 follow it in the conduct of its adjudicatory process. *Layton v. Merit System Commission* (1976)  
3 60 Cal.App.3d 58, 63

4           134.    Both federal and state cases also define an impartial trial as one where the  
5 decisionmakers restrict their process to the record and evidence before them, follow the codified  
6 process of their own rules, and do not base the decision on information outside the record,  
7 including briefings from staff or colleagues lobbying them outside the hearing room. “Due  
8 process requires a fair trial before an impartial tribunal. Such a trial requires that the person or  
9 body who decides the case must know, consider and appraise the evidence.” *Vollstedt v. City of*  
10 *Stockton* (1990) 220 Cal.App.3d 265, 275 citing “‘*Hohreiter v. Garrison*, 81 Cal.App.2d 384,  
11 401. . .; *Morgan v. United States*, 298 U.S. 468 . . . .)’ (*LeStrange v. City of Berkeley* (1962) 210  
12 Cal.App.2d 313, 325.” The U.S. Supreme Court in *Morgan* found the Secretary of Agriculture  
13 had not afforded a lawful hearing where he made his decision solely from consultations with  
14 subordinates. The *Vollstedt* court cited and summarized “[t]he fundamental principle that ‘the  
15 one who decides must hear’” as set forth in *Morgan*: “The court noted that the ‘hearing’ is  
16 designed to afford the safeguard that the one who decides shall be bound in good conscience to  
17 consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by  
18 extraneous considerations which in other fields might have play in determining purely executive  
19 action. The ‘hearing’ is the hearing of evidence and argument. If the one who determines the  
20 facts which underlie the order has not considered the evidence or argument, it is manifest that  
21 the hearing has not been given.” *Vollstedt* at 275 analyzing *Morgan*.

22           135.    Procedural due process in the administrative setting requires that the hearing be  
23 conducted " 'before a reasonably impartial, noninvolved reviewer.' " *Nasha v. City of Los*  
24 *Angeles* (2004) 125 Cal.App.4th 470, 483, citing *Gai v. City of Selma* (1998) 68 Cal.App.4th  
25 213, 219 (italics added). “[B]ias -- either actual or an "unacceptable probability" of it -- alone is  
26 enough on the part of a municipal decision maker is to show a violation of the due process right  
27  
28

1 to fair procedure. "A biased decisionmaker is constitutionally unacceptable." *Cohan v. City of*  
2 *Thousand Oaks* (1994) 30 Cal.App.4th 547, 559.

3 136. "To establish an unfair hearing based upon must establish ""an unacceptable  
4 probability of actual bias on the part of those who have actual decisionmaking power over their  
5 claims.' (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236.) A party  
6 seeking to show bias or prejudice on the part of an administrative decisionmaker is required to  
7 prove the same 'with concrete facts: [b]ias and prejudice are never implied and must be  
8 established by clear averments.'" (*Id.*, at p. 1237; accord *Hongsathavij v. Queen of Angels etc.*  
9 *Medical Center* (1998) 62 Cal.App.4th 1123, 1142.

10 137. These federal and California principles, embedded in the fair hearing  
11 requirement of California law, when applied to the facts set forth in this Petition, compel a  
12 conclusion that the affected landowners and land use appellant before the City Council were all  
13 denied a fair hearing and an order setting aside the December 1, 2021 project approvals and  
14 requiring the conduct of a constitutionally proper hearing is required to vindicate the fair  
15 hearing requirement

16 **Neither The East LA Planning Commission or PLUM Committee Land Use Hearings**  
17 **Complied With California Due Process or Fair Hearing Requirements.**

18 138. The record contains extensive public land use hearing deficiencies, including  
19 restrictive document submission rules for the area planning commission that prejudicially  
20 impaired the ability of the Petitioner to present evidence and its case before the planning  
21 commission.

22 139. In order to prepare for the area planning commission appeal hearing, the City  
23 compiled a mailing list of property owners and tenants within an impact radius around the  
24 project site and also used an interested persons list for everyone who previously asked to be on  
25 the mailing list for items concerning this Project.

26 140. As previously set forth in detail, the City's pattern and practice to drafting  
27 numerous City appeal ordinances, including the CEQA Appeal ordinance to make City officials  
28

1 believe they could lawfully exclude mailing written notice of the quasi-judicial CEQA appeal  
2 hearing to all persons within the potential impact area of the project resulted in the City failing  
3 to send such notices. This is ironic because the City possessed in its file a mailing list of  
4 persons within the radius of the Project site and list of interested persons, and based upon the  
5 wording of LAMC section 11.5.13D, chose to not send written notice of the land use appeal  
6 hearing under CEQA. This was a failure to proceed in accordance with law.

7 141. Petitioner was entitled to be treated with dignity as a coequal participant in the  
8 land use appeal process under the Supreme Court's *People v. Ramirez* case. But given the  
9 existence of the undisclosed pre-PLUM process detailed previously, City officials casually and  
10 routinely treat every land use appellant, including Petitioner in this case, by discussing the  
11 appeal and the City Councilmember's position outside the hearing of the land use appeal. One  
12 indication of an unconstitutional bias is for decision makers to make up their minds as to the  
13 outcome of the land use appeal before entering the hearing room. Here, the existence of the pre-  
14 PLUM process demonstrates that there exists an institutionalized bias against respecting the  
15 integrity of the land use appeal process, so much so that City officials, and it is a great many of  
16 them, participate in a routine and daily violation of the opening meeting law to exchange  
17 comments and the position of the Councilmember, including the position of the Councilmember  
18 in this case. Accordingly, the actions of the City violated the California constitutional  
19 requirements for fair hearing and the dignity owed to conduct a proper and lawful land use  
20 appeal process.

21 142. Also in violation of California's dignity requirement, the PLUM Committee only  
22 permitted Petitioner's counsel 3 minutes to present its appeal. The amount of time afforded to  
23 the Petitioner, who has a burden of proof in the hearing, violates the most basic principles of  
24 enabling a fair hearing. As the U.S. Supreme Court has observed: "The 'hearing' is the hearing  
25 of evidence and argument. If the one who determines the facts which underlie the order has not  
26 considered the evidence or argument, it is manifest that the hearing has not been given."  
27 *Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 275 citing *Morgan v. United States*,

28

1 298 U.S. 468. Of course, when the 3-minute limit on “hearing” Petitioner is considered in the  
2 context that the PLUM Committee has an institutionalized pre-hearing process to determine the  
3 Councilmember’s desired outcome of the hearing, and the actual public hearing is like a  
4 performance after the dress rehearsal, it is hardly surprising the City Council over the years has  
5 cut land use appeal presentation times from 15 minutes, to 10 minutes, to 5 minutes, to now 3  
6 minutes. It shocks the conscious that this passes for a serious land use hearing.

7 143. For all of the foregoing reasons, the City’s action prejudiced the ability of the  
8 Petitioner and affected property owners surrounding the Project site from their right to a fair  
9 hearing under California principles of due process.

10  
11 **FIFTH CAUSE OF ACTION**

12 **(Pattern and Practices That Violate the Specific Plan, Constitutional Rights of Land Use**  
13 **Appellants and Persons Entitled To Notice and To Be Heard)**

14 144. Petitioner re-alleges and incorporates by reference the preceding paragraphs of  
15 this Petition

16 145. There exists a present and ripe controversy between the Petitioner and the City  
17 related to the various patterns and practices of the City that result in ongoing failures of the City  
18 to comply with the FAR requirements of the Specific Plan.

19 146. There exists a present and ripe controversy between the Petitioner and the City  
20 related to the City’s pattern and practice of incorporating into its numerous recent enactments  
21 such as RecodeLA, the Density Bonus implementation ordinance, the Tree Protection  
22 ordinance, and the CEQA appeal ordinance, systemic and ongoing violations of the  
23 constitutional rights of property owners and tenants impacted by the projects, like the Project in  
24 this case, from being able to file appeals as an aggrieved party and from receiving adequate  
25 notice of hearings and a right to be heard with dignity.

26 147. There exists a present and ripe controversy between the Petitioner and the City  
27 related to the City’s pattern and practice of creating and operating a massive pre-PLUM process  
28

1 To carry out this undisclosed process, extensive taxpayer funded staff and other resources are  
2 expended to conduct a system where City officials casually and routinely exchange comments  
3 and positions of City Councilmembers via their deputies, pre-PLUM meetings, PLUM notes  
4 prepared by the CLA, and a PLUM meeting script all in violation of the constitutional rights of  
5 land use appellants and persons with constitutional rights to the dignity of a property conducted  
6 land use appeal hearing.

7 148. As to each of these patterns and practices, Petitioner is entitled to an order from  
8 this Court declaring such patterns and practices in violation of law, and enjoining further pursuit  
9 of such policies and practices.

10  
11 **NOTICE OF COMMENTCEMENT OF CEQA PROCEEDING**

12 149. Petitioner performed all conditions precedent to filing this action by complying  
13 with the requirements of Public Resources Code §21167.5 in filing notice of this action on July  
14 7, 2023. Attached hereto as Exhibit A is a true and correct copy of the Notice of Intent to File  
15 CEQA Petition (“Notice”). This Notice was mailed to the City Clerk for the City via United  
16 States Mail. The Notice was also delivered to the City Clerk via electronic mail.

17 150. On July 7, 2023, Petitioner served the California Attorney General with notice of  
18 the commencement of this lawsuit, together with a true and correct copy of this petition. A copy  
19 of such notice, without copy of this lawsuit, is attached to this Petition as Exhibit B and is  
20 incorporated herein by this reference. Such notice satisfies Petitioner’s duties under Public  
21 Resources Code section 21167.7 and California Code of Civil Procedures section 388.

22  
23 **PREPARATION OF THE RECORD**

24 151. Pursuant to Public Resources Code, section 21167.6(b)(2), Petitioner elects to  
25 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner is  
26 filing a notice of its election to prepare the administrative record. A copy of that election is  
27 attached as Exhibit C.

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**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays for relief as follows:

1. For alternative and peremptory writs of mandate, commanding Respondent to
  - a) Vacate and set aside approvals of the Project.
  - b) Prepare and certify a legally adequate environmental review for the Project.
2. For a stay, temporary restraining order, preliminary injunctions, and permanent injunctions prohibiting any actions by Respondent until Respondent has complied with all applicable state, federal and local laws and the requirements of CEQA.
3. For declaratory and/or injunctive relief to bar the City from further carrying out the patterns and practices the Court determines to be in violation of law.
4. For costs of the suit.
5. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and
6. For such other and further relief as the Court deems just and proper.

Dated: August 7, 2023

By:   
\_\_\_\_\_  
Jamie T. Hall  
CHANNEL LAW GROUP, LLP  
*Attorneys for Petitioner Crane Boulevard  
Safety Coalition*

Channel Law Group, LLP  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

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**VERIFICATION**

I am a member of Crane Boulevard Safety Coalition and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing Verified First Amended Petition for Writ of Mandate and am familiar with its contents. The facts recited in the petition are true and of my personal knowledge.

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

Dated: August 7, 2023

By:   
\_\_\_\_\_  
Mark Kenyon  
*Crane Boulevard Safety Coalition*

**EXHIBIT LIST**

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Exhibit No.

Exhibit

- A. Notice of Intent to File CEQA Petition
- B. Notice to California Attorney General
- C. Notice of Election to Prepare Administrative Record

**Channel Law Group, LLP**  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

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Beverly Hills, CA 90211

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# Exhibit A

# Channel Law Group, LLP

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8383 Wilshire Blvd.  
Suite 750  
Beverly Hills, CA 90211

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Writer's Direct Line: (310) 982-1760  
jamie.hall@channellawgroup.com

JULIAN K. QUATTLEBAUM, III  
JAMIE T. HALL \*  
CHARLES J. McLURKIN

\*ALSO Admitted in Texas

July 7, 2023

## VIA ELECTRONIC AND U.S. MAIL

City of Los Angeles - City Clerk  
200 N. Spring Street  
3rd Floor, Room 395  
Los Angeles, CA 90012  
[clerk.plumcommittee@lacity.org](mailto:clerk.plumcommittee@lacity.org)

**Re: Notice of Intent to Commence CEQA Action and Proceeding; Development Project Located at 464-466 Crane Boulevard, Los Angeles, CA; DIR-2020-427-SPP-1A; ENV-2020-428-CE; CF 22-0163**

Dear City Clerk:

**PLEASE TAKE NOTICE**, under California Public Resources Code section 21167.5, that Petitioner, Crane Boulevard Safety Coalition ("Petitioner"), intends to immediately file a Petition for Writ of Mandate ("Petition") under the provisions of the California Environmental Quality Act ("CEQA") against the City of Los Angeles ("City" or "Respondent"). The Petition will be filed in Los Angeles County Superior Court and will allege, inter alia, that the City incorrectly determined that the proposed development project located at 464-466 Crane Boulevard, Los Angeles, CA ("Project") was exempt from CEQA. Among other things, the Petition will request that the court direct the City to vacate and rescind the project approvals, the determination that the project is exempt from CEQA and to otherwise comply with CEQA. The Petition will seek Petitioner's cost and attorneys' fees.

Sincerely,



Jamie T. Hall  
*Attorney for Petitioner*

**Channel Law Group, LLP**  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

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# Exhibit B

# Channel Law Group, LLP

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8383 Wilshire Blvd.  
Suite 750  
Beverly Hills, CA 90211

Main Line: (310) 347-0050  
Fax: (323) 723-3960

JULIAN K. QUATTLEBAUM, III  
JAMIE T. HALL \*  
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760  
jamie.hall@channellawgroup.com

---

\*ALSO Admitted in Texas

July 7, 2023

*By U.S. Mail*

Office of the Attorney General  
1300 "I" Street Suite 125  
Sacramento, CA 94244-2550

**Re: Challenge to Approval of development project located at 464-466 Crane Boulevard, Los Angeles, CA; *Crane Blvd. Safety Coalition v. City of Los Angeles et al.***

Honorable Attorney General Bonta:

PLEASE TAKE NOTICE, under Public Resources Code §21167.7 and Code of Civil Procedure Section §388, that on July 7, 2023, Crane Boulevard Safety Coalition, filed a verified petition for writ of mandate against the City of Los Angeles ("Respondent" or "City") in the Los Angeles County Superior Court. The petition alleges, among other things, that the City incorrectly determined that the proposed development project located at 464-466 Crane Boulevard, Los Angeles, CA ("Project") was exempt from the California Environmental Quality Act ("CEQA"). Please call if you have any questions.

Sincerely,



Jamie T. Hall

Enclosure: Petition for Writ of Mandate

**Channel Law Group, LLP**  
8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211

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# Exhibit C

1 JAMIE T. HALL (Bar No. 240183)  
CHANNEL LAW GROUP, LLP  
2 8383 Wilshire Blvd., Suite 750  
Beverly Hills, CA 90211  
3 Telephone: (310) 982-1760  
4 [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com)

5 Attorneys for Petitioner,  
CRANE BLVD. SAFETY COALITION

6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF LOS ANGELES**

9  
10 CRANE BOULEVARD SAFETY COALITION, an Case No.  
unincorporated association;

11 Petitioner,

12 vs.

13 CITY OF LOS ANGELES, a municipal  
14 corporation;

15 Respondent.

16  
17  
18 RACHEL FOULLON; IAN COOPER; ROES 1-25

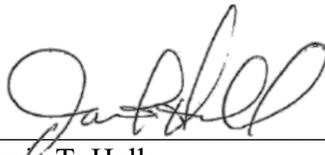
19 Real Parties in Interest.  
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**PETITIONER'S NOTICE OF ELECTION  
TO PREPARE THE ADMINISTRATIVE  
RECORD**

[California Environmental Quality Act  
("CEQA"), Public Resources Code, sections  
2100 et seq.]

1 Pursuant to Public Resources Code Section 21167.6(b)(2), CRANE BOULEVARD  
2 SAFETY COALITION (“Petitioner”) hereby elects to prepare the administrative record and the  
3 record of proceedings in connection with this action as provided by Public Resources Code  
4 Section 21167.6.

5  
6 Dated: July 7, 2023

7  
8 By:   
9 Jamie T. Hall  
10 CHANNEL LAW GROUP, LLP  
11 *Attorneys for Petitioner*

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