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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STUDIO CITY RESIDENTS ASSOCIATION and SAVE LA RIVER OPEN SPACE, Petitioners, v. CITY OF LOS ANGELES Respondent; HARVARD-WESTLAKE SCHOOL; COUNTY OF LOS ANGELES; and DOES 1-10, Real Parties in Interest.	CASE NO.: 23STCP04483 **PETITIONERS' JOINT REPLY BRIEF** Petition Filed: December 13, 2023 Assigned For All Purposes: Honorable Maurice A. Leiter Department 54 Stanley Mosk Courthouse Trial Hearing Date: December 10, 2024 Time: 9:30 a.m.

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I. INTRODUCTION

Petitioners Studio City Residents Association, Save LA River Open Space, and Save Weddington ("Petitioners") are all nonprofit public interest focused organizations that brought this action to protect the environment and Studio City adjacent communities. Petitioners are not just "dissatisfied" with the City of Los Angeles' ("City's") approval to convert one of the last and largest remaining open spaces along the Los Angeles River in the San Fernando Valley to development of 400,000-square feet of sports facilities ("Project") for intensive use by an elite private educational institution, Harvard-Westlake School ("School" or "Real Parties"). Petitioners represent thousands of community members from the San Fernando Valley and beyond who have grave concerns regarding the Project's many adverse environmental impacts, including aesthetic, air quality, health hazards, biological, greenhouse gas ("GHG"), land use and tribal cultural resources. These impacts stem from the Project's replacement of designated and existing open space with dense development of athletic facilities, covering the athletic fields with harmful artificial turf, and failing to provide the thorough analysis and enforceable mitigation required by the California Environmental Quality ("CEQA"). The Project sits in a highly urbanized area (City Opposition Brief ("City") p. 9), which is why more open space is need, not construction. The site has long-served as a visual, recreational, and cooling respite for the community, but will be wiped out by the Project's over-development of private school facilities that some members of the public may occasionally qualify to use.

The City did not use its independent judgment when considering this Project, which is only conditionally allowed on this open space site. Instead, the City rejected consideration of any alternative that did not include every single athletic facility feature sought by the School, allowing the School to set overly narrow project objectives and rely on those objectives to dismiss any reduction in the Project's dense development. "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Contrary to that purpose, the City treated preparation of the environmental impact report ("EIR") as merely a box-checking formality to defend and support the Project exactly as it was proposed by the School, ignoring the strong community opposition and expert evidence of serious impacts.

Throughout their briefs, the City and Real Parties (collectively "Respondents") repeatedly refer to Petitioners' reliance on "late" comments, but fail to disclose that these were all comments submitted prior to the City Planning Commission ("CPC") consideration of the Project and in response to new information provided in the final environmental impact report ("FEIR") or based on emerging scientific information regarding artificial turf, Valley Fever and other impacts that needed to be addressed. This occurred months before the City Council considered the Project and these comments were clearly allowed to raise issues for exhaustion purposes. (Pub. Resources Code[1] §21177, subd. (a).) Respondents also identify that the CPC unanimously approved the Project, but, as Petitioners have addressed, the CPC failed to provide a fair hearing due to the clearly demonstrated unacceptable risk of bias.

As addressed more fully for individual impact areas, Real Parties' claims of mootness should be rejected. (Real Parties' Opposition Brief ("RPI") pp. 31-32.) Real Parties proceeded at their own risk with construction. Moreover, the impacts at issue are ongoing and continue to remain addressable through additional analysis and mitigation. (See also Petitioners' Evidentiary Objections to Declaration of James DeMatte.) Further, Petitioners have not forfeited Planning and Zoning Law or due process claims, as both were addressed in Petitioners' Opening Brief.

For the reasons set forth herein and in Petitioners' Opening Brief, the City's approval of the Project and certification of the EIR violated CEQA, and the approval also violated State Planning and Zoning Law and due process requirements to provide a fair hearing with unbiased decisionmakers. As such, Petitioners respectfully request this Court grant the Petition for Writ of Mandate.

II. THE CITY'S APPROVAL OF THE PROJECT VIOLATED CEQA

A. The EIR Failed to Analyze and Mitigate Significant Aesthetics Impacts.

1. The EIR Fails to Disclose the Project Will Destroy Scenic Vistas.

Initially, Real Parties' removal of trees does not render Petitioners' aesthetic arguments moot. In *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 280, fn. 31, the court opined that the removal of trees did not moot CEQA claims concerning those trees because restoration of the site to its original condition could be compelled, additional mitigation measures could

[1] All statutory references herein are to the Public Resources Code unless otherwise indicated.

be ordered, or the project could be modified or reduced. Moreover, the court retains authority to halt construction of new buildings and the installation of the Project's light poles.

The Initial Study and EIR failed to disclose the Project's destruction of "a gorgeous 16 acres of green" that provides an "urban oasis in the middle of the city." (Petitioners' Joint Opening Brief ("OB") p. 11.) Real Parties claim the Initial Study's analysis satisfies CEQA (RPI p. 12), but the Initial Study underscores that views from the north are of "existing mature trees" and views from the Zev Greenway are of vegetation. (AR 1572.) While the Initial Study discusses post-Project views of mountains and canyons across the site, neither the EIR nor Initial Study disclose the Project's impact on treasured views of the site's urban oasis which the public urged the City to protect. (AR 8090, 26620; 26634-35; 26800; 26659.) Petitioners raised the need to address these aesthetic impacts in their scoping comments on the Initial Study. (AR 2047.)

In *San Franciscans for Livable Neighborhoods v. City and Cnty. of San Francisco* (2018) 26 Cal.App.5th 596, 623, the court upheld an aesthetics analysis disclosing a project may have visual impacts, although those impacts fell below the threshold of significance. By contrast, here, the Initial Study and EIR claim no potential for impact, even though the Project will remove 240 trees visible from public streets and trails, because "[f]ew panoramic vistas are available across" the site. (AR 7698.) Unlike in *San Franciscans*, Petitioners seek disclosure, not mitigation. The City's discretion does not extend to whether it discloses impacts to the public.

Regarding light poles, the EIR explains lights would be narrow and similar in height to netting poles. However, those netting poles are not lighted at night, eight stories high, or visible from afar. The EIR's discussion of scenic vistas overlooks this key aspect. This is different than in *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 493 (RPI p. 12), wherein the court upheld a city determination that impacts to private views were insignificant. Petitioners seek disclosure of impacts to public vistas found significant in *Mira Mar*. (OB pp. 11-12; see RPI p. 12 fn. 5 [questioning Petitioners' references to public views].)

Tellingly, Real Parties ignore Petitioners' argument that the Project triggers EIR aesthetics threshold (c) applicable to projects in an urban area (AR 511) because the Project's 22 80-foot-tall light poles conflict with both City regulations (30-foot height limit) and land use plan designations explicitly

enacted to protect visual quality. (OB pp. 12, 30-33.) The EIR fails to disclose this significant aesthetic impact in violation of CEQA. Real Parties' attempt to bar this argument fails. (RPI p. 12, fn. 5.)

Real Parties fail to address *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1425, wherein the court ordered an EIR to address "temporary impacts of the construction…" Instead, Real Parties argue, without support, that the City's significance thresholds exclude analysis of construction impacts. However, an unsupported statement that "the visual character of a temporary construction site…is not evaluated in an EIR" is not probative (AR 7698), nor are references to EIR and Initial Study pages omitting any discussion of construction whatsoever. (AR 514, 1571-72). Furthermore, a 3-year construction period is hardly temporary, screening trees have been removed, and new, much smaller vegetation has not been planted.

2. The EIR's Misleading Renderings Precluded Informed Decision-making.

Real Parties argue, "CEQA does not require technical perfection or an exhaustive analysis, it does require adequacy, completeness, and a good faith effort at full disclosure." (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 695, emph. added.) But an EIR may not be "inaccurate and misleading" (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 724.)

The EIR provides pre-Project site photographs and post-Project renderings but contains no visual representation permitting a reader to accurately compare the baseline site's tree canopy and few buildings to the Project's myriad buildings, tall walls, and immature vegetation. Instead, EIR photos and renderings preclude the apples-to-apples comparison that is the basis of CEQA analysis. "As with historical impacts, the project's impact on aesthetics cannot be understood unless the project is seen." (*Save Our Capitol!*, *supra*, 87 Cal.App.5th at p. 695, emph. added.) Thus, unlike in *NPCA v. Riverside* (1999) 71 Cal.App.4th 1341, 1361, comparative renderings would provide valuable information commenters sought during the administrative process. (AR 7702.) In particular, the EIR pre-Project photos downplay landscaping and mature trees identified as potential historic resources. (AR 1531-32.) Real Parties never address the site's historicity.

Moreover, EIR and post-EIR images actively mislead the public about the Project size by obscuring new, dense development with tall vegetation that assumes successful and immediate tree

regrowth that will not occur for many years, if at all. (AR 468-71; 24666, 24614; OB pp. 20-21.) But "[a]n EIR must focus on impacts to the existing environment, not hypothetical situations." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.) Without these hypothetical trees, which cannot be assumed (OB pp. 20-21), the Project's aesthetic impacts are substantially greater. The renderings also display viewpoints from angles unlikely to be experienced by the public, such as above the Project and from the middle of the LA River (AR 477; 24620; 24666). If Project renderings are to be believed, the new buildings will be invisible from the street. This is simply untrue. (See, e.g. AR 24619.) The analysis is anything but "exhaustive." (RPI p. 14.)

As the EIR's images mislead viewers into believing the Project's 10-foot walls, 30-foot gymnasium and other buildings, and eight story light posts will be fully screened by vegetation, they fail to provide the good faith effort at the full disclosure required by CEQA.

B. The EIR Failed to Adequately Analyze and Mitigate Air Quality Impacts.

1. The EIR's Analysis of Construction Emissions is Unsupported.

The EIR's analysis of construction emissions is inconsistent with the modeling output provided and fails to aggregate both on-road and off-road emissions, as required to provide the public and decisionmakers with an accurate picture of the Project's construction emissions. (OB pp. 13-14.) It thus precludes informed decision-making. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.)

In lieu of addressing Petitioners' argument that the tables are inaccurate, Real Parties first claim the FEIR explained away the discrepancies pointed out by SWAPE's expert comments. (RPI p. 15, citing AR 7368-74, 7480-84.) Yet Petitioners addressed precisely these comments in their Opening Brief, noting that Table IV.B-8 cannot represent aggregated mitigated off-road and on-road construction emissions because the emissions values reported in that table are lower than those reported for mitigated off-road emissions alone. (OB p. 13; AR 2848, 4784 [clearly identifying "mitigated" emissions].) Real Parties rebut in a footnote that a reader should not compare AR 580 with AR 2848 but instead with Appendix C (RPI p. 15 fn. 9, citing AR 2939, 2986). However, even Real Parties' footnote is clear that it is not providing an apples-to-apples comparison because "the CalEEMod data is aggregated with additional data." (RPI p. 15.) This only underscores Petitioners' claim that the EIR cannot be understood without scouring disparate appendices. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of*

Rancho Cordova (2005) 40 Cal.4th 412, 441-442 ("*Vineyard*").) Moreover, Real Parties' brief and the Response to Comments ("RTCs") at AR 7484 do not excuse the EIR's failure to explain why the CalEEMod output contains three tables purporting to present the same data, mitigated construction maximum daily emissions. (AR 2848, 2939, 2986.) This is not useful to a reader.

Real Parties attempt to reframe Petitioners' argument as a battle of experts. (RPI p. 15.) But the issue is not that Petitioners' expert disagrees with the City's expert. This is not an issue of methodology. The issue is that the aggregated on- and off-road emissions data cannot total less than the off-road emissions alone. CEQA is clear: "[E]vidence which is clearly erroneous or inaccurate…does not constitute substantial evidence." (Cal. Code of Regs., Title 14 ("Guidelines"), §15384(a).) Similarly, Real Parties' self-serving claims that SWAPE's report does not constitute substantial evidence of an impact (RPI at 15) are legally meaningless in this context. If the EIR's tables conclude that A+B = less than B, the EIR is neither "perfection," nor even "adequacy, completeness, and a good faith effort at full disclosure," as required. (Guidelines, §§15151, 15144.)

Next, Real Parties belatedly attack the Petitioners' consultant as not credible without presenting any evidence that SWAPE's conclusion that "A+B must be greater than B" is "weak, biased, or otherwise faulty," and cite irrelevant cases that have nothing to do with the Project at issue. (RPI pp. 15-16.) In *Nassiri v. City of Lafayette* (2024) 103 Cal.App.5th 910, 930, the court noted differences between the project the expert analyzed and the project approved. This did not occur here. In *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786, SWAPE's credibility was not at issue, but whether its consultant's "suggestion to investigate further" provided "substantial evidence of an adverse impact." Neither *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1349-53 nor *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 582 involve SWAPE. Real Parties also do not cite to any part of the record where the City disputed SWAPE's credibility, required to preserve any objections to credibility. (See *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 377–379.) Real Parties' unfounded and untimely attack cannot change that aggregated off-road and on-road emissions must exceed off-road emissions alone.

The information upon which the EIR's air quality conclusions are based must be accessible to decisionmakers and the public. Petitioners do not dispute that highly technical data may be summarized

in the EIR. (RPI p. 16 fn. 10.) However, the data that is presented must be accurate, internally consistent, and not misleading.

2. The EIR Failed to Analyze Valley Fever Impacts.

Real Parties distract from the EIR's failure to analyze and mitigate potential Project impacts from Valley Fever by misstating the law. (RPI p. 16.) CEQA explicitly allows exhaustion of claims "before the close of the public hearing" at which the Project was approved. (§21177, subd. (a).) As Real Parties admit, Petitioners raised concerns about increasing Southern California Valley Fever incidence "timely, in response to the DEIR." (RPI p. 17; see also AR 2365 [scoping comments for Valley Fever analysis].) In response to a FEIR that dismissed these very real health concerns, based on an unproven claim that Valley Fever is not found in Los Angeles, Petitioners submitted additional expert evidence to the City in an unsuccessful effort to urge analysis of the issue. (AR 33770-81.) Petitioners' submission occurred four months before the City's finalized its Project approval in November 2023 and was timely.

Further, Petitioners challenge not the City's inadequate RTCs but the EIR's failure to analyze the impacts of Valley Fever. Accordingly, *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1111 and *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 852 fn. 9 are inapplicable. (RPI p. 17.) Moreover, in *Gray*, the court expressly stated it "will address those allegations of errors that were identified in the untimely expert opinions…that bear upon the issue of whether there is substantial evidence to support the [agency's] decision to approve the CEQA Project because the [agency] has the burden of showing that there is substantial evidence to support its decision." (*Gray*, *supra*, 167 Cal.App.4th at p. 1111, emph. added.) In fact, the *Gray* petitioners were successful on noise claims discussed in an "untimely" expert report. (*Id*. at 1123.)

Valley Fever has been detected by the East Valley Health District, not far from the Project site. (AR 33737, 3772-75.) Petitioners also submitted evidence that Valley Fever outbreaks are ongoing (AR 3773-76) and Los Angeles County cases are increasing (AR 33770 [cases "spiked" recently].) Real Parties argue that the Project will not disturb as much dust as the Northridge Earthquake did 30 years ago (RPI p. 17), but Valley Fever infection requires only ground disturbance, such as that associated with construction. (AR 33770, 33776-77 [construction workers have highest risk].) No evidence supports the FEIR's claims that large dust clouds are needed for infection. (AR 7563, 33775-76.)

Failing here, Real Parties lean on future compliance with SCAQMD's Fugitive Dust Rule – which is already required for all projects in the District – and the provision of respirators "upon request." Real Parties seek to mitigate away an impact the EIR has not analyzed. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656.) Even if this was permitted, and it is not, providing respirators "upon request" does not ensure that workers will be made aware of the risks or will wear them. (AR 33779-81.) Nor does it protect neighborhood receptors susceptible to infection, including those already suffering from respiratory ailments. (AR 33778-81.)

Finally, Real Parties cast this argument as a disagreement with the City's experts (RPI p. 17), but the EIR contains no expert analysis of the risk of Valley Fever to area residents. The City's backup – alleged mitigation – would not protect residents. The City has abused its discretion by failing to analyze and disclose the Project's potential Valley Fever impacts.

C. The EIR Fails to Adequately Address Impacts Resulting from the Project's Use of Artificial Turf.

1. The EIR Failed to Adequately Analyze and Mitigate Significant Artificial Turf Heat Hazards.

Contrary to Real Parties' claims, the Petitions explicitly plead hazards of the use of artificial turf in the SCRA/SLAROS Petition stating, under the artificial turf heading: "The EIR fails to adequately disclose, analyze, or mitigate the potential direct or indirect impacts of artificial turf on players, wildlife, humans, and the Los Angeles River." (SCRA/SLAROS Pet. ¶388.) This allegation is sufficient to satisfy California's notice pleading requirements. (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 610-611.)

This stands in sharp contrast to the cases cited by Real Parties. In *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, a complaint did not allege a legal theory regarding assignment of another party's rights to the plaintiff, and when the court gave the plaintiff an opportunity to do so, it declined. (*Id*. at 1091.) In *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, the petitioner alleged only CEQA violations and not municipal code violations in its petition and thus could not seek relief for a violation of the municipal code. (*Id*. 505-06.)

CEQA requires analysis of "health and safety problems caused by the physical changes" of a project (Guidelines, §§15126.2, subd. (a), 15065, subd. (a)(4).) Thus, the health and safety hazard posed

by the extreme heat of the Project's artificial turf is a CEQA-cognizable impact. Real Parties cite distinguishable cases in an attempt to evade this requirement. *Mira Mar, supra,* 119 Cal.App.4th at 492, irrelevantly addressed blocking private views. *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357 addressed playground equipment for a church school only to be used by the private school attendees. (*Id*. at 376–377.) In contrast, the Project's artificial turf sports fields will not only be used by Havard-Westlake students. Students from other schools—the "away team"—will be exposed to the extreme temperatures of the athletic fields during games. (AR 434, 481)

Here, Real Parties sought approval of this Project in heavy reliance on representations that the sports fields and other facilities will be available to the public. (AR 152-53 [Statement of Overriding Considerations identifies shared use of facilities as benefit]; 445 [shared use Project objectives].) Thus, unlike the cases cited by Real Parties, the health and safety impacts of the Project will not only affect a limited number of particular persons. The RTC conclusively claims "athletic injuries," which could include skin burns and heat-related illness, are not treated as effects under CEQA. (AR 8554, 24160-61, 5793.) The EIR's failure to treat this as "health and safety problems caused by the physical changes" is a violation of CEQA, the interpretation of which the City is afforded no deference.

The issue of health impacts from the high temperature of artificial turf was also fully exhausted. Petitioners do not allege the City violated Public Resources Code section 21091, subdivision (d) by failing to respond to comments (RPI p. 19), but instead that the EIR's analysis of this health impact is inadequate and its conclusions lack evidentiary support. (OB pp. 14-16.) This failure to disclose artificial turf heat impacts was raised in comments on the DEIR. (AR 7422-23, 7602, 8996, 9425.)

After the RTC disregarded these impacts, prior to the Planning Commission hearing on the Project and at least four months prior to final Project approval, experts provided detailed comments, assessments based on peer-reviewed studies, and addressed the RTC's misleading summary of the one report it relies upon to claim there would be no heat-related health impacts. (AR 24100-24144, 24157-24184.) These were not "minor one-off" comments. (RPI p. 19:18.) Experts at Aperture point out that the New York State study referenced by Real Parties did identify the potential for increased heat-related impacts from use of artificial turf. (AR 24135; see also AR 5793.) The DEIR itself provides evidence of the health impacts by referencing a study conducted to find ways to reduce the heat-related health

impacts associated with artificial turf. (AR 5793.) Aperture and expert Mello identified additional studies showing extreme heat increases on artificial turf and impacts associated with that increased heat. (AR 24160-61; see also AR 26657-58 [Scientist Bill Nye identifying heat impacts of artificial turf].)

As in *Gray, supra,* 167 Cal.App.4th at p. 1111, the post-EIR experts' comments are part of the record that is reviewed to determine whether substantial evidence exists to support the City's conclusion in the EIR. All evidence in the record demonstrates a significantly higher surface temperature for artificial turf, with studies measuring temperatures between 140 and 170 degrees. (AR 24160-61, 5792-93.) The only reasonable assumption based on these significantly elevated temperatures, which is the assumption made by the studies relied upon in the EIR, is that heat-related health impacts could result from use of artificial turf if mitigation is not implemented.

Admitting mitigation is needed, Real Parties refer to the commonsense condition of requiring field users to be made aware of the potential for heat illness. (RPI p. 20.) However, Real Parties fail to address, and thus waive opposition, Petitioners' identification of the failure to include such a measure in either the Conditions of Approval ("COAs") or the Mitigation Monitoring Program ("MMP"). (OB p. 16.) The opposition further fails to address Petitioners' arguments regarding the lack of existence of temperature reducing coating added to COAs shortly before Project approval and, if it does exist, whether such undisclosed chemical could itself result in adverse environmental impacts. (OB p. 16.)

2. The EIR Fails to Adequately and Accurately Disclose Impacts from PFAS.

Real Parties cite to COA 31.d requiring compliance with the regulations contained in Assembly Bill ("AB") 1423 as ensuring the artificial turf will not contain any PFAS. (AR 231; RPI p. 21.) However, Real Parties fail to acknowledge that AB 1423 requires the presence of PFAS to be determined based upon measurement of total organic fluorine of the artificial turf. (Petitioners' Request for Judicial Notice in Support of Opening Brief ("Pets. RJN"), Exh. 5, p. 67.) Petitioners' statement that PFAS presence should be measured based on total organic fluorine is not just a disagreement with the EIR's conclusions, but an identification that the EIR has failed to assess whether the artificial turf contains PFAS based upon the very metric the COAs have obligated the Project to use. Real Parties' objections to the use of a total fluorine test, which the COAs require them to use, are thus without merit. (RPI p. 20.) When scientists at PEER tested artificial turf similar to that planned for use in the Project at

the same lab relied upon by Real Parties, it was found to contain high levels of PFAS. (AR 24150-51; see also AR 24095-97 [Non Toxic Communities Organization detailing PFAS found in artificial turf testing], 24164-83 [data regarding artificial turf testing for PFAS].) Without the standard and required testing, the EIR lacks evidentiary support for a claim that the artificial turf will not contain PFAS.

Additionally, Real Parties fail to address the fact that the DEIR relied upon outdated studies prior to the discovery of PFAS in artificial turf in 2019. (OB p. 17; AR 10400-05.) The EIR cannot rely upon outdated studies and rejection of required testing methods to support its claim that the Project's inclusion of artificial turf with have less than significant impacts from PFAS. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs*. (2001) 91 Cal.App.4th 1344, 1366-67.) The EIR lacks evidentiary support that there is AB 1423 compliant artificial turf available.

Real Parties merely repeat the EIR's unsupported statements that the artificial turf will be permeable and PFAS will not leach from the turf. (RPI p. 21.) This ignores that the EPA considers artificial turf to be an impermeable surface (AR 33395-96, 33838-46) and serves the unsupported basis for the EIR's failure to assess the water quality impacts of PFAS leaching from artificial turf.

Real Parties cite the EIR's assessment of a 2016 study cited by commentors regarding microplastics from artificial turf, and thus PFAS, impacting water quality. (RPI p. 21; AR 7196.) While the 2016 report identified what the EIR relied upon as a knowledge gap, a 2023 scholarly study also found that artificial turf represents a high proportion of the plastic pollution in aquatic environments. (AR 33853, 33855.) The International Association for Sports and Leisure Facilities also found large amounts of artificial turf blades break off during sporting events; for the Project, those plastic blades would have only a short trip to reach the LA River. (AR 24373.)

This is not a disagreement among experts, but a failure to "ensure that such analysis stay[s] in step with evolving scientific knowledge" in assessing the Project's impacts. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504; *Berkeley Jets*, *supra,* 91 Cal.App.4th at p. 1366-67.) The EIR's unsupported claims regarding the leaching of artificial turf into nearby water sources resulted in the City ignoring the findings of EPA standard leaching procedure testing conducted at the request of PEER for materials by the same manufacturer of the Project's artificial turf and previous testing cited by commentors that demonstrate water quality impacts would

result from use of artificial turf. (AR 24152, 24162, 24095-97, 24176-79 [showing PFAS in wetlands downgradient from artificial turf].)

D. The EIR Fails as an Informational Document Because it Lacks Essential Information Regarding Tree Health and Light Pollution.

The Opposition does not rebut Petitioners' arguments that the EIR's failure to account for any tree mortality, light scattering or light reflection were informational defects reviewed *de novo*, not for substantial evidence. (OB pp. 19:3-20:2 [tree health is fundamental to EIR in context of vast open space adjacent to LA River]; 24:24-25:15 [lighting analysis assumes restrictions not in Project, impermissibly incorporates mitigation measures and precludes informed comment].) Informational defects cannot be cured by "supplemental" information not included in the EIR. (*Vineyard*, *supra*, 40 Cal.4th at pp. 442-443.) *Gray*, *supra*, 167 Cal.App.4th at p. 1111 addressed the adequacy of a RTCs under §21091, subdivision (d) and is not authority for the claim that "late" comments cannot raise information defects.

1. The EIR Omits Fundamental Information on Future Tree Health.

Real Parties' focus on Threshold (e) (RPI p. 22: 7-19) is misdirection, as Threshold (a) addresses impacts on "species identified as a candidate, sensitive or special status species" and Threshold (d) addresses impacts on migratory wildlife species. (AR 620-621.) These categories include Western Yellow Bat and migratory birds and raptors (AR 3575-3576.) Turning logic on its head, Real Parties assert Petitioners lack evidence that replacement trees within Los Angeles die. (RPI p. 23:4-7.) Angelenos for Trees cited a literature review of "Urban tree mortality" finding a median mortality rate of 6.6-7%, allowing the Court to reasonably infer its application to a site described as such by the Opposition. (Guidelines, §15384(a).) It is not reasonable to assume that 100 percent of replacement trees will remain in "excellent" health indefinitely. (AR 12608; cf. *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 337 [reasonable to assume planned and funded road widening will occur].) Petitioner need not prove this precise mortality rate because even a lower rate over five years would substantially reduce ecological services and taint the EIR's analysis of canopy coverage, heat island impacts, carbon sequestration and biological resources. The Opposition recycles vague claims that the landscape architect "carefully considered" certain factors (RPI p. 22:25-28) but ignores Petitioners' extensive points on those same factors, waiving the point. (OB pp. 20:23-21:19.)

The Opposition claims that Petitioners failed to show that mortality would "result in deterioration of environmental conditions over the status quo." (RPI p. 23:24-25.) However, the median mortality rate for urban trees would result in the death of 121 trees over five years (AR 33762)—almost entirely negating the claimed net increase of 150 trees. The death of these trees, combined with stunted growth due to inappropriately large box size to mask the impacts of tree removal, would mean canopy coverage might not recover for decades, if ever. Even short-term impacts can be highly significant for many species, such as the Western Yellow Bat with its low fecundity, high juvenile mortality and long generational turnover. (AR 30341.) The EIR thus fails to analyze and disclose short-term impacts (Guidelines, §15126.2, subd. (a) [EIR shall analyze short-term effects]) or disclose the analytic route from information to conclusion (*Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 404). *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359 involved a negative declaration not subject to these requirements. Petitioners challenge the EIR's adequacy regarding replacement trees, not removal itself, and are thus not moot. (RPI p. 31:25-27) Relief may be granted in an informationally adequate EIR with enforceable replacement tree mitigation. (See Section II.A.1.)

2. The Lighting Analysis was Fatally Defective.

The Land Protection Partners ("LPP") letter described the EIR's technical analyses as "fatally" defective for failing to account for scattered or reflected light or the uniquely harmful spectra of high temperature LED lights. (AR 33819-33822.) Instead of defending the technical analyses—the foundation on which informed subject-matter experts would comment—the Opposition cites other sections of the EIR that vaguely reference reflected light, LED lighting and "sky glow" issues. (RPI p. 25:18-22.) The citations generally describe proposed lighting (AR 516-520), address different phenomena (AR 512 [discussing glare which is daytime reflection off windows], 627-633 [failing to identify harmful spectra of LEDs or reflected/scattered light], 7585 [discussing reflection off artificial turf only]) or assert that no analysis was required (28380-28381 [no analysis of "sky glow" required for aesthetic impacts]). Real Parties assert LPP failed to measure the existing number of lumens actually emitted on the Project site (RPI p. 25:12-13), a measurement which is impossible and irrelevant given that LPP's measurements were based on existing lighting information obtained from the EIR itself (AR 33821). Technically sound light pollution studies are essential to informed comment and decision-

making for a sports complex encompassing and adjacent to biologically significant resources. (Cf. *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 [further studies not necessary where survey found no habitat or sign of species].) The Opposition's remaining claims regarding RIO District compliance hours of operation, Title 24 and existing light pollution were fully addressed in the Opening Brief. (OB pp. 22:1-3, 23:7-22.)

3. The Lighting Analysis Improperly Incorporates Musco Standards.

The Opposition fails to address the three independent theories on which the assumption of Musco lighting standards prejudicially violates CEQA. (OB pp. 24:21-25:15.) Instead, Real Parties rely on the false claim that the EIR's lighting analysis merely assumed compliance with the RIO District and Los Angeles Municipal Code ("LAMC"), not installation of specialized equipment. (RPI p. 26:20-27:5.) Although the FEIR tried to cover its tracks by deleting references to "Musco lighting fixtures" (AR 8757-8760), both the Original and Supplemental Lighting Reports cite specific Musco product numbers (AR 12580, 12541-12542) and attach specification sheets for products including the material, finish and precise dimensions of light shielding (AR 12595-12599, 12570-12574). (See AR 7154 [Musco assumed "specifically designed [fixtures] with precise optics and integral shields"].) The LAMC merely mandates that lighting not be directed upward and incorporates shielding generally—not the enormous 19-inch tall, 25-inch long shields proposed for the field lights (AR 12570). The DeMatte Declaration's extra-record evidence (¶¶ 11-13) cannot cure the EIR's defects after the fact based on a contract that was not in the EIR and is not attached to the Declaration—especially after the FEIR specifically deleted references to Musco. (*Vineyard*, *supra*, 40 Cal.4th at pp. 442-443.) The Declaration fails to even affirm that the Project will incorporate the same models specified in the DEIR and FEIR.

E. The EIR Fails to Analyze and Disclose the Project's GHG Impacts and Mitigation.

The City mischaracterizes Petitioners' arguments in an apparent effort to detract from the issues that Petitioners have raised. Petitioners do not dispute the City's general discretion to select a threshold of significance under Guidelines section 15064.4, subdivision (c). Nor do Petitioners dispute reliance on a qualitative threshold of significance under Guidelines section 15064.4, subdivision (a) and *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 229 ("*CBD"*). Instead, as set forth below, Petitioners object to the EIR's determination that the Project is compliant with GHG

reduction policies that do not govern individual developments, as well as the EIR's misleading quantitative analysis of Threshold (a). The City also fails to refute Petitioners' point that the EIR fails to address years of unmitigated tree removal. For these reasons, the EIR's GHG analysis is inadequate.

1. The EIR's Reliance on Inapplicable GHG Reduction Plans is Misleading.

The City's brief fails to demonstrate how the EIR's reliance on GHG reduction programs that are inapplicable to the Project can support a finding of less than significant. (City p. 15.) While Threshold (b) assesses whether the Project conflicts with "applicable" policies adopted for the purpose of reducing GHG emissions (AR 804), many of the policies that the EIR relies on to justify a finding of less than significant are not applicable to the Project.

For example, DEIR Appendix C, Table 1 includes a list of policies from the 2017 CARB Scoping Plan that the DEIR claims the Project is compliant with. (AR 2812-18.) However, none of these policies apply to individual land use projects, and primarily identify state agencies as "responsible parties." (*Ibid.*) Reliance on statewide regulations requires a nexus between the impacts within the area governed by the regulations and the project. (See *CBD, supra,* 62 Cal.4th at pp. 229-30.) "[T]he Scoping Plan does not propose statewide regulation of land use planning but relies instead on local governments . . . [which] thus bear the primary burden of evaluating a land use project's impact on greenhouse gas emissions." (*Ibid*; see also *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 843 [measures implemented at statewide level not applicable to project].) The City cites *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, 735-36, 742-44 ("*AIR"*) in claiming that it can rely on LADWP's compliance with Renewable Portfolio Standard mandates (City p. 18), but that inapposite case demonstrates the exact error in the City's analysis. In *AIR*, the project in question was an oil refinery—a regulated entity under the state cap-and-trade program, which requires the refinery to reduce or offset its GHG emissions. (*AIR, supra*, 17 Cal.App.5th at pp. 735-36.) Here, the Project is not subject to the GHG reduction regulations that apply to LADWP, and thus the EIR may not rely on these regulations to claim compliance. In fact, the EIR even claims compliance with the cap-and-trade program, despite the program's inapplicability to the Project, stating "As the Project would not impede the [cap-and-trade] Program's progress, the Project is considered compliant." (AR 2817.) Such an irrelevant conclusion cannot support a finding of less than significance.

Equally confounding is the City's argument that although SB 350 does not apply to the Project, it must be consistent with its policies to justify a less than significant finding. (City p. 18:9-10.) In assessing a cumulatively considerable impact like GHG emissions, CEQA requires a lead agency to explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. The Project cannot implement requirements that do not apply to it. (Guidelines, §15064, subd. (h)(3).) The EIR also lists a number of provisions from the SCAG Regional Transportation Plan/Sustainability Communities Strategy (RTP/SCS), but none of these are standards or regulations that apply to the Project. (AR 2819-23.) For example, cited provisions include updating local zoning codes and general plans, pursuing joint development opportunities for housing/mixed-use development near transit, support work-based programs to encourage and incentivize emissions reductions, among others. (AR 2820-23.) These simply cannot be implemented by a private development project for an athletic facility, and thus the City's claims of compliance with the RTP/SCS policies are irrelevant. (City p. 18:7-8.)

Further, the City mischaracterizes the function of PDF-GHG-1. Citing *Lotus, supra* 223 Cal.App.4th at 656 fn. 8, the City claims that the EIR's addition of a solar voltaic system is an "inherent" part of the Project, and thus it is not a mitigation measure. (City p. 19.) In *Lotus*, the Court distinguished project design features that were meant to avoid, reduce, and mitigate project impacts from elements of a project that define the project itself, such as the type of permeable asphalt base used for a highway paving project, finding that the latter are not improperly compressed mitigation measures. (*Lotus, supra*, 223 Cal.App.4th at 656 fn. 8.) Here, installation of solar panels is not an integral, defining element of the project (a school athletic facility), but rather a mitigation measure clearly intended, as admitted by the EIR, to offset the Project's "amount of electricity demand." (AR 8891 [MMP].) As such, the EIR should have separately identified and analyzed the Project's GHG impacts before imposing PDF-GHG-1 as a mitigation measure, but failed to do so in violation of CEQA. (*Lotus, supra,* 223 Cal.App.4th at 658.)

2. The EIR's Discussion of GHG Significance Thresholds is Misleading.

The City fails to refute the misleading nature of the EIR's GHG analysis. Petitioners do not object to the City's discretion in adopting a threshold of significance (City p. 13), but rather its failure to

follow the correct CEQA procedure in adopting and then failing to meaningfully evaluate Threshold (a), a predominantly legal question governed by de novo review. (*CBD, supra,* 62 Cal.4th at 219.) The City admits that the EIR adopts both Threshold (a) and Threshold (b), but redundantly uses compliance with GHG reduction plans to evaluate both thresholds. (City p. 14:6, citing AR 807; see also AR 826-27.) The EIR admits that that the Project would increase GHG emissions. (AR 818.) Thus, even though the EIR quantifies GHG emissions under its discussion of Threshold (a), it declines to explain the significance of those increased emissions in relation to Threshold (a). (AR 821, 826-27.) Such a presentation is misleading because it leads the reader to believe that the Project's GHG emissions are less than significant on a quantitative, rather than qualitative basis.

3. The EIR Fails to Address Impacts of Years of Unmitigated Tree Removal.

The City repeats the conclusions of the EIR's carbon sequestration and canopy study, but fails to directly respond to Petitioners' arguments. (City pp. 20-21.) The City argues that the replanted trees will eventually provide greater carbon sequestration and canopy services than the existing trees, but ignores the EIR's failure to address the more than four-year period during which the existing trees' carbon sequestration and canopy services, including reduction of the urban heat island effect, will be lost. (OB p. 30.) The City claims that mitigation measures need not have "immediate effect" (City p. 20); however, CEQA prohibits deferral of the formulation of mitigation measures (Guidelines, §15126.4, subd. (a)(1)(B)) and requires the EIR to address short-term impacts (Guidelines, §15126.2, subd. (a)). Further, mitigation measures "are not mere expressions of hope," and must actually be implemented. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508).

Finally, the Project's substantial tree removals exacerbate the urban heat island effect, particularly in tandem with the Project's use of artificial turf. (AR 7650, 7658; Section II.C.1.) The City claims that the fact that the Project is located in an area ranking low on the urban heat island index somehow demonstrates the Project's lack of impacts (City p. 21, citing AR 3210); on the contrary, the area's existing low score demonstrates a potential for significant impacts and the importance of preserving the existing cooling effects of the Project site to avoid worsening of the urban heat island effect. For all these reasons, the EIR's failure to address over four years of unmitigated tree removal is

an omission that must be analyzed and mitigated.

F. The EIR Fails to Disclose Inconsistencies with Land Use Plans.

1. The EIR Failed to Disclose Inconsistency with Plan Open Space Definition.

The City's brief focuses on its discretion in balancing land use plan policies, but fails to recognize the issue raised by Petitioners – the EIR's failure to disclose that the Project, located on an Open Space designated site, is inconsistent with the definition of Open Space provided in both the Sherman Oaks-Studio City-Toluca Lake-Cahuenga Pass Community Plan ("Community Plan") and the City's Open Space Element. (OB pp. 30-32; see also AR 9831 [Community Plan Map with footnote 6 setting Open Space Plan definition of Open Space for Community Plan].) "CEQA Guidelines section 15125, subdivision (d) is clear in requiring EIRs to analyze and disclose inconsistencies with relevant land use plans…The injury [] is not inconsistency with the General Plan as a whole [], but rather the failure to adequately inform the public and decisionmakers about inconsistencies with any of the policies as required by CEQA." (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1340 ("*FUTURE*").) The EIR does not analyze and disclose the Project's inconsistency with these plans' definition of Open Space designated land. The Open Space Plan defines Open Space as publicly or privately owned lands that function as recreation, scenic, cultural or historic values, health and safety benefits or preservation of natural resources and are either 1) essentially free of structures and buildings or 2) natural in character. (Pets. RJN, Exh. 1, p. 16 [Open Space Plan p. 1], Exh. 4, p. 63 [Com. Plan p. III-12].) Instead, contrary to the City's claims the EIR found consistency (City p. 24:12-13), the EIR claimed it need not consider the Open Space designation in evaluating land use impacts. (AR 7701.)

The CEQA Guidelines identify land use impacts as inconsistency with a plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (Guidelines, App. G, §XI(b); OB pp. 30-31.) Although the City disagrees, once it has been established that the provision was adopted for the purpose of avoiding or mitigating environmental impacts, a lack of consistency with that provision itself demonstrates a potential land use impact that must be disclosed in the EIR. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 929.)

The City ignores the relevant question – whether the definition of Open Space included in the

Open Space Element and Community Plan was adopted for the purpose of avoiding or mitigating an environmental effect. The Community Plan and Open Space Element are both clear that defining and protecting Open Space designated lands is intended to mitigate adverse environmental impacts of developing both private and public open space. (Pets. RJN, Exh. 1, p. 16, 18; Exh. 4, pp. 63-64 ["Open space is important due to its role in both physical and environmental protection."].) As such, a Project conflict with that designation constitutes an environmental impact under CEQA. (*Friends of Riverside's Hills v. City of Riverside* (2018) 26 Cal.App.5th 1137, 1150–1151.) This is in contrast to the economic development goals at issue in *Joshua Tree Downtown Business Alliance v. Cnty of San Bernardino* (2016) 1 Cal.App.5th 677, cited by the City. (City p. 25.)

The Project imposes construction of large structures across a tree-covered site mainly free of structures and thus cannot comply with the Open Space designation of a site either essentially free of structures and buildings or natural in character. (See AR 446-48, 493, 2036, 35106.) The Open Space designation is mandatory and fundamental and thus consistency is required. (*FUTURE*, *supra*, 62 Cal.App.4th 1332, 1340-41; *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 100–101.) This is not a mere disagreement with the City's interpretation of a regulation but instead the EIR's failure to consider the plain language of the definition of Open Space. Moreover, because this designation implements the Open Space Element, the City cannot attempt to balance it with other land use plan policies. (*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704.) The City fails to address the overarching importance of consistency with the Open Space Element, as established in the Opening Brief. (OB pp. 32-33.) This is in contrast to *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 239 where the EIR actually considered the Open Space provision at issue and determined a limited encroachment into the open space at issue there would prevent a larger impact of more tree removals and grading that would occur if the road was constructed outside of the buffer. Here, there is no showing consistency with the Open Space Element would result in greater impacts.

Additionally, the EIR's failure to use the Open Space Element and Community Plan's definition of Open Space resulted in a failure to disclose inconsistency with Community Plan Policy 5.1-1 and its program to protect Open Space designed land from encroachment of more intense uses. (OB p. 31; Pets. RJN, Exh. 4, p. 64.) These plans include privately owned open space in their definition of Open Space

land; the baseline use meets the Plan definition of Open Space. Thus, the Project does not increase the amount of Open Space land but instead builds on existing Open Space and increases use intensity.

The City also objects to Petitioners' inclusion of Planning and Zoning Law violations under the same heading as the CEQA violations in a footnote. (City p. 24, fn. 5) The City references inapplicable case law addressing the requirement for appellate briefs to have separate headings. (*Tukes v. Richard* (2022) 81 Cal.App.5th 1, 12, fn 5.) Petitioners have not waived this related argument.

2. The EIR Fails to Disclose Inconsistencies with Open Space Element Provisions Regarding Historic Resources.

The City fails to address the mandatory and fundamental Open Space policy identified by Petitioners and completely ignored by the EIR, even in Appendix J: "Cultural and historical monuments located on Open Space Lands shall be preserved." (Pets. RJN, Exh. 1, p. 20, emph. added; *Spring Valley*, *supra*, 248 Cal.App.4th 91, 100–101.) The Project demolishes the overwhelming majority of the Studio City Golf and Tennis Center instead of preserving this designated historic resource. (OB p. 33.) Failure to analyze and disclose any inconsistency with this policy is a failure to proceed in the manner required by law, not subject to the City's discretion. (Guidelines, §15125, subd. (d); *Vineyard, supra,* 40 Cal.4th at 441-42.)

Regarding historic resource policies with which Appendix J admits the Project would have partial conflicts, the City relies on a statement in the EIR that the Project would not "substantially conflict" with Open Space Element policies addressing historic resources. (City pp. 23-24; AR 968.) This does not disclose the partial conflict buried in the Appendix. (*Vineyard*, *supra*, 40 Cal.4th at p. 442.) Moreover, these policies are more discretionary than the clearly mandatory policy above that was wholly ignored. Thus, the EIR did not inform the public and decision-makers about inconsistencies as required by CEQA. (*FUTURE*, *supra*, 62 Cal.App.4th at 1340.)

G. The EIR Fails to Disclose and Mitigate Impacts to Emergency Access and Response.

In response to expert-raised concerns about queuing around the Project site that could adversely affect Fire Station 78, Real Parties argue that impeding emergency access is no longer a CEQA impact. (RPI p. 28:5-6.) On the contrary, the amended CEQA Guidelines still require disclosure, analysis, and

mitigation of traffic-related safety impacts. (Guidelines, App. G §§ IX(f) [would the project "impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?"]; XVII(c) [would the project "Substantially increase hazards due to a geometric design feature…or incompatible uses?"]; XVII(d) [would the project "Result in inadequate emergency access?].) *Ocean St. Extension Neighborhood Assn. v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1021 did not address emergency access and response and is inapplicable.

Real Parties' next claim the Project would eliminate driveways (RPI p. 28), seemingly ignoring new conflicts the Project's driveways and garage create. Real Parties cite no evidence that security will be able to manage queues where all vehicles must stop to confirm parking passes, even if motorists without passes are quickly redirected, particularly during special events when thousands of people arrive simultaneously. (AR 33364 [expert countering AR 28306].) Traffic engineers found, "with required verification of parking passes, it will take an hour or more to load the parking structure." (AR 31850, 31860.) Moreover, an engineering degree is not required to understand that motorists cannot move out of the way of fire trucks, with or without a siren, if there is nowhere for their vehicles to go. A warning light cannot, by itself "hold back" exiting vehicles. (RPI p. 28; OB p. 35; AR 33363.) Nor is it under Real Party's control for enforceability. (OB p. 35.) Although Real Parties may not like it, CEQA permits Petitioners to comment until the close of the Project approval hearing (§21177, subd. (a)) including on the FEIR's failure to correct issues traffic experts pointed out during DEIR review. (AR 33359-66 [responses to inadequate FEIR]; see, e.g., 31846-60 [DEIR safety comments].)

Timely garage evacuation also requires CEQA analysis. (Guidelines, App. G §§ IX(f), XVII(c), XVII(d).) Although neglected by Real Parties' brief, the FEIR understood "it may take an hour or more to clear the parking garage" (AR 7862-63), retained references to a single exit (AR 7248), and provided no analysis of two-exit evacuation feasibility. Real Parties claim Petitioners did not explain why visitors would not flee on foot as suggested by the FEIR, but experts countered that visitors would not abandon their expensive vehicles. (AR 33363 [cited at OB p. 36].)

Real Parties argue TRAF-PDF-1 (Construction Management Plan) and TRAF-PDF-2 are not mitigation measures (RPI p. 29:5-7), but the EIR relies on these measures in its conclusions that the Project would not have significant impacts on emergency access during construction or operation. (AR

1186-87.) The EIR never analyzed the circulation or safety impacts of construction. (AR 7810-11.) Thus, these are mitigation measures, and the EIR's failure to analyze the Project's impacts without them impermissibly compresses analysis and mitigation. (OB p. 36.) Deferred mitigation requires inclusion of specific performance standards; TRAF-PDF-1 contains none. (Guidelines, §15126.4.) It also requires the EIR to analyze any potential emergency access issues caused by Project, which did not occur.

H. The City's Tribal Cultural Resource Analysis Was Deficient.

The City's primary defense is that it "considered" the evidence presented by the Kizh and concluded there was no substantial evidence of potential significant impacts on tribal cultural resources (TCRs). This is simply not true. The City grossly mischaracterized the evidence that it was presented. (OB p. 37-38.) The location of the project within the Village of Cahuenga (AR 6865) is obviously material as it bears on the potentiality of the presence of TCRs. The fact that the City falsely stated the village was three miles away (AR 7787) is clear evidence of failure to "consider" tribal expert information. The City also argues "[t]here is no evidence that the presence of tribal cultural resources in the vicinity of the Project is likely, and Petitioner fail to demonstrate otherwise." (City p. 27.) Not so. The Kizh, experts as to their own resources, advised the City as follows:

> Due to the project site being located within and around a sacred village (Cahuenga), adjacent to sacred water courses and major traditional trade routes, there is a high potential to impact Tribal Cultural Resources still present within the soil from the thousand of years of prehistoric activities that occurred within and around these Tribal Cultural landscapes. (AR 6866, emph. added).

The City states that the substantial evidence standard does not permit "reweighing the evidence in the record." (City p. 28.) First, there is no evidence City staff has "expert" knowledge as to TCRs. Second, even under the substantial evidence standard, courts must consider all relevant evidence, including evidence distracting from an agency's decision. Therefore, there is indeed a limited weighing of the evidence. (*La Costa Beach Homeowners Association v. California Coastal Commission* (2002) 101 Cal.App.4th 804, 814.)

The City persists in arguing it has the discretion to set a threshold of significance that requires evidence of identified resources on the Project site itself. First, that is inconsistent with Section 21084.3(b) which requires a public agency to adopt mitigation measures for projects that "*may* cause a substantial adverse change to a tribal cultural resource." There is no requirement that resources be

known and precisely identified on a project site. Second, the TCRs were expected to be found at subsurface depths extending to 21 feet. (AR 1201.) The fact that no resources had been identified on the Project site is simply because they were under the surface. The threshold used by the City was entirely unworkable and does not comport with CEQA. Finally, while Appendix G states that a city has discretion to determine whether a resource is significant, in so doing it "shall consider the significance of the resource to a California Native American tribe." (Guidelines, App. G, §XVII.) As explained above, it did not. It manipulated and mischaracterized the information presented to it.

The City argues its "standard condition of approval" need not be in the MMP required by Section 21081.6 because it determined that impacts to TCRs would not be significant. (City p. 28-29.) But, as explained above, expert tribal opinion demonstrates that the impacts would be significant and therefore the condition was required to be placed in the MMP. The City cites *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1028, but the evidence of impacts in that CEQA exemption case were sparse. This is not the case here.

Real Parties argue mootness due to the advanced state of grading. (RPI p. 32.) However, ground distributing activity is not yet complete and even if it is complete before the time of trial, the issue of whether the City may continue to refuse to include its "standard condition of approval" in the MMP required by CEQA presents an issue of broad public interest that is likely to reoccur, a discretionary exception to the mootness doctrine. So does whether the City may set a patently unreasonable threshold of significance for TCRs that refuses to consider the significance of those resources to tribes as required by Appendix G. (*Epstein v. Superior Court* (2011) 193 Cal.App.4th 1405, 1411.)

I. The City's Approval of the Project Relies on a Misleading Project Description.

CEQA requires the provision of adequate and accurate information regarding a project to allow for analysis of impacts, evaluation of alternatives and consideration of benefits. (OB p. 39.) The City acknowledges that the adequacy and accuracy of a project's description is a question of law not afforded discretion. (City p. 11.) Here, Petitioners do not claim the EIR fails to address the "whole of the project" as alleged by the City (*ibid*), but instead that the EIR and the City's findings improperly provide misleading information regarding the public's use of the Project facilities.

Unlike the projects at issue in *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70

Cal.App.4th 20, 35 and *Claremont Canyon Conservancy v. Regents of University of California* (2023) 92 Cal.App.5th 474, 490, the Project at issue here is not "conceptual" or "flexible." (City p. 13.) This is a highly specific project, with project objectives that are overly narrow and specific (OB pp. 41-43; Section II.J.1), and thus requires a greater level of Project detail in the EIR than less certain projects. (Guidelines, §15146.)

Additionally, in *Dry Creek, supra,* 70 Cal.App.4th 20, a less detailed project description was found to be acceptable because the project approval included detailed objective conditions of approval with which the project's water diversion structures were required to comply. (*Id*. at 35.) Similarly in *Claremont Canyon, supra,* 92 Cal.App.5th 474, objective criteria were included in the project's conditions of approval. (*Id*. at 489.) In sharp contrast, here, the conditions of approval merely echo the subjective and nonspecific provision from the EIR that the public may use the facilities "when not in use by the School." (AR 227, 466.)

Allowing the Project proponent to determine when public use will be allowed, if at all given the discretion the School has in determining which members of the public can access the facilities, does not provide adequate information regarding the Project. (AR 227 [access for undefined "pre-approved organizations" and School may require public to submit to background checks].) The School is not required to set hours of public use for the new recreational facilities nor even provide public use if there is any School use of the facilities. (AR 226-227.) The RTC admitted that fees will be charged for any public use of the facilities that is allowed. (AR 7142 ["use of recreational facilities by entities other than the School would require a fee" for maintenance and security]; AR 33346-47 [fees, heavy security, burdensome prerequisites limit public use].) The project description is misleading and inadequate because the EIR and findings rely on the public's ability to use the new facilities as a basis for Project approval. The City also failed to address the EIR's misleading information regarding co-use of facilities raised by Petitioner—if even one of following facilities are in use by the School, then the public is not allowed to use any of them: the gymnasium building, which includes the classrooms, athletic fields, and pool. (OB p. 40; AR 7141, 8733.) This is contrary to co-use claims made elsewhere in the EIR. (AR 7143 [claiming academic use would not limit use of recreational facilities]; AR 33330.).

Here, it is not the economic issues at issue like those in *Anderson First Coalition v. City of*

Anderson (2005) 130 Cal.App.4th 1173, 1182. (City p. 12.) The EIR relies on public use of the new facilities in evaluating the Project's recreational impacts. (AR 1132-33.) The EIR also includes daily shared use of the tennis courts, gymnasium courts, athletic fields, and swimming pool as a project objective (AR 445), rejecting other alternatives in part because they provide less public access to new facilities (AR 1389, 1422). The statement of overriding considerations also relies on the Project's provision of daily use of these new recreational facilities as a basis for overriding the Project's significant impacts. (AR 349-350.) The EIR and findings lack the objective standards requiring specific daily use for these facilities that this reliance on such public use necessitates.

J. The Alternatives Analysis is Prejudicially Inadequate.

1. The EIR Reliance on Impermissibly Narrow Project Objectives Prevented Informed Decision-making and Public Participation.

Contrary to the City's claims (City p. 30), Petitioners relied on the correct standard of review for reliance on improperly narrow project objectives (OB p. 41). The City failed to proceed in the manner required by law when relying on the Project's hyper-specific objectives. (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 690-91 ("*WATER*"), citation to *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 ("*Friant Ranch*").) The City's reference to case law regarding the substantial evidence standard is inapplicable to the issue at hand. (City pp. 30-31, citation to *Ocean Street, supra,* 73 Cal.App.5th at 1016 [decision-makers' conclusions are reviewed for substantial evidence].)

The City's identification that some objectives are specific, but others are not, does not save the EIR's project objectives. (City p. 30.) Petitioners did not cherry-pick objectives they dislike, but instead identified highly specific objectives that the EIR used to reject consideration of potentially feasible alternatives. These objectives identify a long list of School sports, each of which must be accommodated at the Project site, despite the underlying purpose of the Project being to "supplement the School's athletic and recreational facilities," not provide all athletic and recreational facilities. (AR 1284, emph. added.) Project objectives also provide the construction that is required, the type of landscaping and lighting that must be used, and that artificial turf must be included. (AR 1284-85; OB p. 42.)

While there are more general objectives included in addition to the hyper-specific ones, such as providing opportunities for public use, the analysis and rejection of alternatives makes clear that the

Real Parties' specific objectives take precedence. The EIR identified that in order to satisfy the Project objectives, an alternative would need "to accommodate two playing fields, tennis courts, a pool, all with respective bleachers, and a gymnasium that would provide for recreational practice and instruction, as well as allow for competitive meets with available spectator seating and adequate onsite parking." (AR 1288.) That is not just meeting the basic goal of supplementing the School's athletic facilities, but instead the Project objectives were used to "ensure[] that the results of [the EIR's] alternatives analysis would be a foregone conclusion." (*WATER, supra,* 78 Cal.App.5th at 692.) The City tellingly failed to address the most relevant case relied upon by Petitioners—*WATER*. There the objectives found to be impermissibly narrow were far less detailed than this Project's objectives. (*WATER, supra,* 78 Cal.App.5th at 691-92.)

It is the City's burden to establish the lack of prejudice from these overly narrow Project objectives, and it has failed to meet that burden. (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 670.) Additionally, Petitioners did identify the prejudice resulting from these improper objectives. (OB pp. 42-43.) For example, an alternative without use of artificial turf on the athletic fields was rejected based on objective 8, despite the fact the Councilmember for this district advised that artificial turf be eliminated from the Project, demonstrating the consideration of alternatives was based on applicant-derived objectives, not the City's independent judgment. (AR 1285, 28025; OB pp. 42-43; §21082.1, subd. (c)(1); AR 9817; see also AR 44585-86 [City found use of natural turf would not have significant impact].) Additionally, the EIR rejected consideration of an alternative with a reduction in facilities that would maintain publicly available open space on the northwest side of the Project site that the community has urged be considered from the beginning. (AR 2049-51 [Petitioners provided detailed scoping comments requesting consideration of such an alternative], AR 7998, 9818-22, 9016, 9439, 10417 [DEIR comments on lack of reduced density alternative], AR 33352-55 [FEIR comments on need for reduced density alternative] AR 33889, 34684-85, 34853-55 [appeal identifying alternative] AR 43238-40, 43265 [comments to City Council] AR 27517-18, 27541, 27577, 27581-83 [comments at PLUM].) This alternative proposed inclusion of the new gymnasium and one athletic field, which would supplement the existing athletic field, gymnasium and Olympic pool already located at the School's existing campus, making it a feasible alternative. (AR 2049-51.) It would also eliminate the need for

construction activities on the west side of the Project, which is where the Project's significant and unavoidable noise impacts would occur. (AR 999 [map of noise receptors], 1083, 34854.) The EIR's reliance on Project objectives that "dismissively rejected anything other than the proposed project" prejudiced consideration of a proposed alternative that would be both feasible and could substantially lessen the Project's significant and unavoidable impacts. (*WATER, supra,* 78 Cal.App.5th at 693.)

2. The EIR Lacks a Meaningful Analysis of Meaningful Alterantives.

The EIR failure to consider a reasonable range of meaningful alternatives is due in large part to the overly narrow Project objectives discussed above. The City highlights that these highly specific objectives are the issue when claiming Petitioners failed to identify feasible alternatives "given the objectives of the Project." (City p. 32:19.)

Additionally, feasible alternatives proposed by Petitioners and others were rejected despite meeting the basic objective of "supplementing" existing School athletic facilities, as opposed to creating a standalone athletic campus. Petitioners did not sit back and expect the City to identify additional alternatives (see *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199), but instead proposed feasible and less impactful reduced density alternatives throughout the administrative process. (See Section J.1, above.) The EIR's lack of consideration of meaningful alternatives is clear given its failure to consider a reduced density alternative as proposed by Petitioners that would concentrate the significant noise-producing construction away from the sensitive receptors on the west side of the Project site.

The EIR includes only more impactful alternatives and alternatives designed to fail by eliminating features deemed to be key. (OB p. 43; *Save Our Capitol!, supra,* 87 Cal.App.5th at 703-704.) Unlike in *San Franciscans, supra,* 102 Cal.App.4th 656, 690-92, Petitioners are not claiming the EIR required an economic analysis of potential alternatives. Instead, Petitioners are asserting the EIR lacked a consideration of meaningful alternatives as required by CEQA.

III. COMMISSIONER CHOE'S EXCEPTIONAL AND UNDISCLOSED SCHOOL CONNECTIONS RESULTED IN A BIASED PROCESS.

The central issue in this case is whether Commissioner Choe's extraordinary, ongoing and

undisclosed donations to the School exceeding $500,000[2], earning her public honors including an endowment in her name, establish an unacceptable risk of bias. Case law has not considered connections remotely approaching those here, presumably because the need for recusal by a decisionmaker with such connections is obvious. (OB p. 45:11 fn. 10 [recusals for friendships, donation to same little-league, late father as building architect].) Commissioner Choe's role as a founding member of an alumni association (AR 27210:3-8) is also a cause for concern, considering the Project facilities are proposed to be used for alumni events (AR 2719). President Millman's conduct, including her failure to enforce disclosures or grant adequate time to objectors, is an aggravating circumstance reinforcing the intolerable risk of bias by Commissioner Choe. Their role as alumni has no role in Petitioners' contentions.

Instead of addressing the exhaustive case analysis in Petitioners' Opening Brief, the City relies repeatedly on the claim that Petitioners must show "concrete facts" indicating bias. (City pp. 33:1-6, 33:20-23, 34:11-18.) Just as Courts have found impermissible bias where a decisionmaker opposes an applicant's request while also harboring a personal or undisclosed connection to the request (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, [planning commissioner opposed project while also serving on neighborhood association]; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172-1173 [councilmember opposed project impacting views from rental]), Commissioner Choe's vocal support of the Project, along with her extraordinary, ongoing and undisclosed donations to the School, are the quintessential "concrete facts" indicating an intolerable risk of bias. Donations of such magnitude are a concrete, unconditional expression of the strongest support for the School's endeavors.

The City Opposition's citations at pp. 33:23-34:2 prove that Choe's donations are unprecedented. There were no financial contributions in *Independent Roofing Contractors v. Cal. Apprenticeship Council* (2003) 114 Cal.App.4th 1330 or *Petrovich Development Co., LLC v. City of Sacramento* (2023)

[2] The RPI Opposition asserts that Petitioner Save Weddington, Inc. had "largely invented" its calculation that Commissioner Choe has donated over $500,000 to the School. (RPI at p. 33:8.) However, because the School's Annual Reports disclose a range of possible donations (AR 35123 [$25,000-$49,999 in 2020-2021, AR 35126 [$50,000-99,999 in 2021-2022]), Petitioner's calculation in fact reflects the minimum estimate when combined with other known donation amounts (AR 35161 [$25,000 donation from family foundation in 2020], AR 35186 [same in 2021]). These records reflect donations only from 2020-2022; the Court may reasonably infer similar donations since Commissioner Choe has been recognized for "10+ Cumulative Years of Giving." (AR 35123.) Moreover, the School—the only party in possession of donation records—has not affirmatively stated the cumulative amount of Commissioner Choe's donations, even when confronted with evidence of remarkable donations on appeal. (AR 35110-35187.) The Court may infer from this silence the accuracy of Petitioner's estimates. (Evid. Code §413.)

48 Cal.App.5th 963. In *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, the Court held that comparatively trivial donations of less than $2,000 to four of the five councilmembers did not require disqualification, as donations to elected representatives were constitutionally protected and disqualification would be ripe for manipulation. (*Id*. at pp. 1228-1229, fn. 7.) Such considerations are absent here, involving a volunteer commissioner's support for an applicant. Likewise, *Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 780 (City at p. 35:16-18), the Court noted that elected councilmembers—not citizen commissioners—may voice opinions on matters of public importance.

The presumption of regularity (City p. 33:7-11) cannot apply under these exceptional circumstances, where Commissioner Choe's undisclosed donations place her among a handful with prestigious honors and named endowments out of tens of thousands of alumni. The Opposition relied on *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, in which the court found reliance on staff to be a typical expression of confidence entitled to the presumption of irregularity. (*Id*. at p. 222-225.) Moreover, there is a presumption of prejudice here because the accumulation and use of power (i.e., social capital) by the highest levels of the City's elites is a form of currency itself. (See OB p. 45:12:17.)

Recognizing the facts here are exceptional, the Opposition repeatedly gives a false impression of honest disclosure and genuine scrutiny. The City asserts that "both Commissioners publicly disclosed their relationship to the school" (City p. 34:12-13), but Commissioner Choe disclosed only that she was an alumna, failing to disclose even one cent of her donations to the School even after being confronted by a member of the public over this troubling omission (AR 27210). The Opposition claims that Commissioner Choe reminded the other Commissioners of her seniority merely to demonstrate that "she took pride in maintaining transparency and avoiding conflicts of interest" (City p. 36:8)—a claim that can hardly be taken at face value after she shut down any public inquiry into her contributions with evasive answers and woefully inadequate disclosures. (AR 27209:12-27210:13.) Courts are not bound by a person's self-serving claims that they are unbiased. (*Nasha, supra,* 125 Cal.App.4th at 476 [Councilmember claimed "I have no bias in this situation"].) Likewise, the Opposition portrays Commissioner Choe's public access comments as noble (City p. 36:1-9), but her choice of words ("can anyone just walk in") immediately following yet another materially incomplete disclosure ("I'm not on

the board of Harvard-Westlake") raises doubts about her conscious or unconscious priorities. The City parses words claiming the CPC "approved a modified Project" (City p. 36:10) but fails to mention these modifications were drafted by staff and City Councilmembers (AR 23864-23873) prior to the hearing, not by the CPC itself.

The Opposition finally asserts that the City Council's review cured the biased decision (City p. 36:10-37:11.) However, Commissioners play a unique role in reviewing land use approvals as unelected citizens appointed by the Mayor. (Petitioners' Supplemental Request for Judicial Notice ("Supp. RJN"), Exh. 8 [Charter § 231 (Mayor appoints commissioners)], Exh. 9 [§ 551 (CPC "shall" advise and make recommendations)].) Removing the oversight of an unbiased CPC would radically alter the review structure enshrined in the City Charter by rendering quasi-judicial decisions subject only to City Council review. Case law recognizes the unique contributions of each individual on a tribunal. (OB at p. 47:16-22.) The City Council does not "start from a clean slate" without an initial decision by an unbiased body. (*Gibson v. King County* (2007) 256 F.App'x 39, 41 [bias taints process "even when the ultimate decisionmaker independently reviewed" decision].) *Clark, supra,* 48 Cal.App.4th at 1175 is not authority for the proposition that review by the City Council cures a biased commission decision; the Court found that bias within that council was prejudicial because it reviewed the matter independently. Under the totality of circumstances, Commissioner Choe's personal interest in the School creates a constitutionally intolerable risk of bias.

IV. CONCLUSION

For the reasons set forth herein, and in Petitioners' Opening Brief, the Joint Petitioners respectfully request the Court grant the writ of mandate.

Dated: October 28, 2024

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PROOF OF SERVICE

I am employed by Carstens, Black & Minteer LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA. On October 28, 2024, I served the within documents:

PETITIONERS' JOINT REPLY BRIEF

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 28, 2024, at Hermosa Beach, California.

/s/ Sarah Bloss

Sarah Bloss

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