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August 7, 2014

*Via U.S. Mail and Facsimile* (213) 978-1079

Council of the City of Los Angeles  
Arts, Parks, Health, Aging and River Committee  
City Hall  
200 North Spring Street, Room 395  
Los Angeles, CA 90012

Re: Appeal of adoption of initial study/mitigated negative declaration and conceptual approval for the Performing Arts Center Project; W.O. #E170202A; Public Resources Code § 21151 (c)

Dear Honorable Members of the Arts, Parks, Health, Aging and River Committee:

On behalf of Friends of Griffith Park, the Griffith J. Griffith Charitable Trust, and Sierra Club Angeles Chapter Griffith Park Task Force ("Appellants"), we respectfully request a recommendation supporting Appellants' appeal of the April 2, 2014 decision of the Board of Commissioners of the Los Angeles City Recreation and Parks Department to adopt an initial study and mitigated negative declaration for the Griffith Park Performing Arts Center Project ("Project"). Appellants represent the interests of those who strive to protect the Park's historic, biological, and recreational values for future generations, based upon their respective organizations' missions and convictions. Appellants seek preservation of the Old Zoo Area's unique historic features, the nearby wilderness areas, and the spirit of free and open public recreation embodied in the documents dedicating Griffith Park. Appellants respectfully urge the City Council to deny approval of the Project until an environmental impact report (EIR) has been prepared that adequately discloses and mitigates the Performing Arts Center Project's significant adverse impacts, especially to the Park's sensitive wildlife.

Appellants' appeal is proper pursuant to section 21151 of the Public Resources Code, which provides, "If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report... that certification ... may be appealed to the agency's elected decisionmaking body, if any." The Board of Commissioners of the Recreation and Parks department is not an elected decisionmaking body, and its determinations under the California Environmental Quality Act (CEQA) are appealable to the City's elected decisionmaking body, the City Council.

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An EIR is required whenever a fair argument exists that the project may have a significant adverse impact on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) “‘May’ means a reasonable possibility.” (*Pocket Protectors v. City Of Sacramento* (2004) 124 Cal.App.4th 903, 927.) Thus, the fair argument standard provides a “low threshold” for requiring the preparation of an EIR. (*No Oil, supra*, 13 Cal.3d 68, 84.) Importantly, “if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.” (*Ibid.*) Here, a fair argument exists that the Performing Arts Center Project will have significant adverse aesthetic, historic, biological, and recreational impacts on the Old Zoo Area of Griffith Park. As these unmitigated impacts require preparation of an EIR, the Board of Commissioners’ adoption of a mitigated negative declaration (MND) for the Project violated CEQA.

The Performing Arts Center Project authorizes the construction of a permanent stage to serve audiences of up to 5,000 people in the Old Zoo Picnic Area portion of Griffith Park. Although the July 31, 2014 rebuttal to Appellants’ appeal states that the Project expects a maximum of 2,500 attendees at events, no cap on attendance is included in the Project’s conditions. Thus, the audience may reach the 5,000 people that the Old Zoo Area can hold, especially if a permanent stage, backstage area, and restroom improvements improve the quality of the audience experience. (See Biological Resources Report, p. 6 [noting “improved viewing capabilities, set up and breakdown abilities for performers, and improved safety and ADA access”].) The Project also contains no limit on the frequency of events, which would almost certainly increase with improved facilities. The Project also includes ancillary development, such as a new switchboard, resurfaced parking lot, improved restrooms, power line relocation, pathways, and an Americans with Disabilities Act-compliant bridge, although portions of the Project have not yet undergone environmental review or are mischaracterized in the initial study and mitigated negative declaration (MND). (See, Attachment 2, Exhibit D.)

#### **I. Adverse Impacts to the Old Zoo’s Historicity and Aesthetic Impacts.**

Dating to 1913 and later a center of Works Progress Administration projects, the Old Zoo Picnic Area is integral to Griffith Park’s 2009 designation as Los Angeles Historic-Cultural Monument #942. The entire Old Zoo Picnic Area has been delineated as a sensitive historic resource, and is dominated by the Old Zoo enclosures. (See Attachment 2, Exhibit D, pp. 6-7.) However, the proposed 45-foot x 45-foot permanent stage, backstage area, and 26 to 28-foot-tall lighting poles are as large or larger than these historic enclosures. Together, the stage, backstage area, poles, pathway, and ADA-compliant bridge would adversely impact the Old Zoo features that are the basis of the

historic designation. This dramatic alteration of visual character presents significant adverse impacts to the Old Zoo's historic and visual character that are not fully analyzed or mitigated by the MND. In particular, the Project would introduce modular bridges to the Old Zoo Area, even though the visual impact of these bridges has not yet been reviewed by the Office of Historic Resources.

When the park was designated a Historic-Cultural Monument in February 2009, the Planning Commission instructed the Department of Recreation and Parks, and Office of Historic Resources(OHR) to adopt formal protocols for sign-offs by OHR for all Griffith Park projects within contributing Historic-Cultural areas. These protocols were to be adopted within six months. As far as Friends of Griffith Park is aware, these protocols have never been adopted and were not implemented here. Thus the Office of Historic Resources has not had an opportunity to apply the required protocol to its review of the Project. Therefore, the rebuttal's response that "CHC [Cultural Heritage Commission] had no comments on the final design" is disingenuous.

## **II. Adverse Impacts to Biological Resources.**

A fair argument exists that the Project's construction, operation, and new sources of nighttime lighting and noise may have significant adverse impacts on sensitive species, on riparian habitat, and on known wildlife corridors. This requires preparation of an EIR.

Although the City appears to be relying on inaccurate maps, the entire Old Zoo Picnic Area has been delineated as a wilderness zone. The Old Zoo Area is located in the lower portion of Spring Canyon, which contains one of only a few perennial streams located in the Park. (Biological Resources Report, p. 15 [noting blue line streams].) The Old Zoo Area also provides a connection between lower elevation habitats (the stream drains into the Los Angeles River) and higher elevation habitats. Portions of the drainages associated with this stream lie adjacent to the Project's parking, bridge, and other improvements. Friends of Griffith Park and the City agree that sensitive ecological areas lie immediately adjacent to the Project site.

In July 2014, biologist Daniel S. Cooper prepared a review of the wildlife located in the Old Zoo Area of Griffith Park, based on wildlife camera data, a review of literature, and personal observation. (Attachment 1, p. 7.) By contrast, the Biological Resources study undertaken in connection with the MND relied almost exclusively on a review of the sparse literature and a single visit outside of spring blooming or breeding periods. (Biological Resources Report, pp. 12-13.) Mr. Cooper notes that the Old Zoo Area contains "one of the most extensive and intact oak woodlands in the park," which is important because oak woodlands have often been converted into other uses within the

Park. (Attachment 1, p. 4.)

The Old Zoo sits adjacent to rugged wildland habitats teeming with rare plants, such as valley cholla and the endemic Humboldt lily. (Attachment 1, p. 5.) The only Santa Monica Mountains occurrence of the San Gabriel Mountains leather oak was collected near the Old Zoo. (*Ibid.*) The California Native Plant Society lists the Humboldt lily and the leather oak as “rare.” (*Ibid.*) The MND fails to adequately consider, analyze or mitigate the Project’s potential impacts to any of these rare plant species.

Mr. Cooper noted that over 100 species of birds have been observed at the Old Zoo Area and picnic areas, and over 30 species may nest in the area. (Attachment 1, p. 8.) Three species of raptors may breed in the Old Zoo Area, including the Cooper’s Hawk, Red-tailed Hawk, and Great Horned Owl.

Due to the site’s proximity to higher-elevation areas and a seasonal stream, the Old Zoo Picnic Area is also rich in mammal species. Notably, the Old Zoo Area has the highest bat detection rates and highest species diversity in the Park. (Attachment 1, p. 11.) Big brown bat, western red bat, hoary bat, California myotis, canyon bat, and Mexican free-tailed bat have been confirmed at the Old Zoo, and several species roost and likely breed on-site. (*Ibid.*) The western red bat is a California species of special concern, listed as “high priority” by the Western Bat Working Group. (California Special Animals List, available at <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/spanimals.pdf>, p. 47.) The hoary bat is also a California species of special concern and is listed as “medium priority” by the Western Bat Working Group. (*Ibid.*) Although no protocol-level survey was performed for these species, the Biological Resources Report confirmed that several special status bat species had a high likelihood of roosting and foraging near the Project.

The Report admitted, “[n]oises generated during nighttime performances could disrupt the feeding of some bat species in the immediate area.” (Biological Resources Report, p. 45.) Even so, without support, the Report determined that no adverse impacts would occur because disturbances from performances would only be temporary and because affected bats could flee to portions of the Park that would not be affected by the Project. (*Ibid.*) Specifically, the Report stated, “these periodic performances would not cause a bat species population to drop below self-sustaining levels.” (*Ibid.*) On the contrary, there are no guarantees that these evening disturbances to roosting and feeding would be only “temporary” or “periodic”. The Project contains no limits on the facility’s use that protect roosting or foraging bats. If the Project is used nightly, affected bat species will begin to avoid the Old Zoo Area and adjacent habitat entirely, which further

restricts their already much-reduced habitat. This, alone, is a significant impact to biological resources that requires preparation of an EIR. Additionally, the Report improperly claims that the Project's impacts on sensitive species of bats need not be addressed unless it causes their populations to drop below self-sustaining levels. Given that these bat species are already species of special concern, any known disruptions to feeding and roosting in and near the significant ecological area must be considered significant. The City must protect the biological integrity of Griffith Park's sensitive ecological areas. Finally, despite the Report's admission that Project operations would disturb sensitive bat species, the MND contains no mitigation to reduce these impacts. Mitigation measures for construction impacts are irrelevant. An EIR must be prepared that analyzes the Project's potential impacts on each sensitive bat species and that contains alternatives or mitigation measures to eliminate these impacts.

The Old Zoo Area is one of the only Park areas inhabited by gray fox and is a high-use area for bobcats. (Attachment 1, p. 11.) The Old Zoo Area also divides two subpopulations of western gray squirrels that have survived the introduction of invasive eastern gray squirrels and fox squirrels and could serve as an important reintroduction area for this embattled native species. (*Ibid.*) Mountain lions and a black bear have also been reported near the Old Zoo. (*Ibid.*) They are not addressed by the MND.

Mr. Cooper ends his review of the Old Zoo Area wildlife with restoration recommendations for four areas adjacent to the proposed Project. (Attachment 1, pp. 12-17.)

Despite the Old Zoo Area's abundance of wildlife, including nocturnal species, the Project proposes additional nighttime activities and human presence in the area. The introduction of up to 5,000 people will discourage use of the area by wildlife, which will block known movement corridors through the area. Although the rebuttal claims that the Project site cannot be a wildlife corridor, the Biological Resources Report qualifies this response, finding, "this is not to say that common wildlife do not pass through the Project site, especially during nighttime." (Biological Resources Report, p. 42.)

Perhaps most important, the permanent stage would increase the frequency of nighttime events in the area. As conditioned, the Project contains no limits on the frequency of Performance Center use. The Project's construction could also prevent the Park from realizing the four restoration opportunities presented in Mr. Cooper's review.

The Project would also introduce new sources of light and noise into the Old Zoo and adjacent significant ecological areas that adversely impact the behavior and foraging of nocturnal species, such as bats, mountain lions, and bobcats. Although the site is

currently unlit, the MND contains no analysis or mitigation of the Project's lighting impacts. The Project requires that lighting be shielded downward, but contains no limits on allowable brightness or locations. Noise mitigation of operational impacts is limited to compliance with City Code, a measure that fails entirely to take into account impacts on sensitive wildlife. Alone and cumulatively, the Project's impacts due to the introduction of amplified sound could have significant adverse impacts on wildlife that have not been adequately considered or mitigated.

Increased use of the area could also disturb roosting or breeding bat species, resulting in significant adverse impacts to biological resources. For example, the western red bat's primary foraging period coincides with the highest-levels of insect activity in the early evening.

([http://www.wbwg.org/speciesinfo/species\\_accounts/vespertilionidae/lab1.pdf](http://www.wbwg.org/speciesinfo/species_accounts/vespertilionidae/lab1.pdf).) This is the same time period that would likely be used for performances at the Project, and increased human presence, night lighting, and increased or amplified sound would have detrimental impacts on the foraging of this highly-sensitive species.

Another potential adverse impact of the Project relates to the interactions between corvid species, specifically jays, and hoary bats. Jays are one of the chief predators of the hoary bat. ([http://www.wbwg.org/speciesinfo/species\\_accounts/vespertilionidae/laci.pdf](http://www.wbwg.org/speciesinfo/species_accounts/vespertilionidae/laci.pdf).) However, jay species are closely associated with human activity, particularly with areas where humans feed and picnic. (See, e.g., <http://labs.russell.wisc.edu/peery/stellers-jay-project/>.) By increasing the number of people using the Old Zoo Picnic Area during performances, the Project will increase food subsidies available to jay species. This will likely lead to increased populations of jay and other corvid species in the Park, and increased bat mortality. The MND contains no mitigation measures to protect sensitive bat species from harm caused by Project operations.

Thus, there is a fair argument that the Project may have significant adverse impacts on biological resources, and an environmental impact report is required. Specifically, the Project has the potential to “[h]ave a substantial adverse effect” on special status species, to “[h]ave a substantial adverse effect on any riparian habitat”, and to “[i]nterfere substantially with the movement of any native resident or ... wildlife species or with established native resident or migratory wildlife corridors (CEQA Guidelines Appendix G.) The City's failure to conduct an adequate biological resources analysis of the Performing Arts Center project does not absolve its responsibility to do so. The Court of Appeal has held, “The agency should not be allowed to hide behind its own failure to gather relevant data.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

**III. The Project Will Have Cumulative Impacts on the Old Zoo Area That Have Not Been Addressed.**

The MND also fails to address cumulative adverse impacts to the Old Zoo Area, resulting from several recent changes of use that attract additional people, nighttime lighting, and nighttime noise. As none of these changes in use have undergone environmental review, they are not properly considered part of the environmental baseline. These changes in use include, but are not limited to:

Haunted Hayride

In 2010, the Haunted Hayride event was brought to the Old Zoo through the LA Parks Foundation. TenThirtyOne Productions operates the wagon-pull event. During the event, infrastructure is staged throughout the Old Zoo area's large footprint, and actors scare, thrill and act out various Halloween-like themes. When the event was introduced to the Park, there was apprehension about the event's future growth and attendance. The event now occurs during the entire month of October, with set up stretching several weeks into September.

Over the last four years, the event has been well-attended despite the very high cost of tickets. Income for 2013 was over \$1.5 million. As a result, the event has grown in scope. Where there were only a couple tractors pulling wagons in 2010, now at least a dozen are employed. Last year, billionaire investor Mark Cuban reportedly committed \$2 million in working capital to further grow TenThirtyOne. Further growth is expected, and a 5-year, renewable RFP is under review.

While popular, the Haunted Hayride has damaged the Old Zoo Area environment. Where grass once grew below native sycamore trees in the lower riparian area, once used for quiet picnicking, the ground is now bare. Graffiti and trash have become insurmountable issue. Various organizations alerted the City to the Haunted Hayride's adverse impacts and sounded caution about its appropriateness for this venue. One organization, the Greater Griffith Park Neighborhood Council, submitted a formal letter documenting concerns about intensive use of the area and wildlife usage and corridors.

Great Horror Campout

In June 2014, the Old Zoo hosted a new, two-night event, an overnight "Great Horror Campout." This event is also operated by TenThirtyOne Productions. The event was promoted at a ticket cost of \$159 to \$223 and promised to be scary, with little time to sleep in the many tents that were set up at the Old Zoo. In its first year, tickets were

available for 400 tents, sleeping two to four attendees each. Although some areas of the Old Zoo were restricted from access, post-even reviews revealed that the restricted areas were infringed.

Both the Haunted Hayride and the Great Horror Campout are of particular concern due to their nocturnal timing and intense sonic character. These new and growing events, neither which underwent environmental review, in addition to the newly added potential for impacts by Shakespeare and Symphony events and new events drawn to the permanent Performing Arts Center, elevates the potential for significant adverse impacts on the biological resources of the area. An EIR is necessary to address and mitigate the potential cumulative impacts.

#### **IV. Adverse Impacts to Passive Recreation.**

In addition to its likely significant, unmitigated impacts on the Park's historic and biological value, the Project may have a detrimental impact on recreational resources that has not been adequately considered. An increase in the attendance or frequency of performances would reduce the Old Zoo Area's tranquility, especially for picnickers and passing hikers. The Project's use for future events that may require an admission fee would also restrict the site's availability for free recreation and violate the restrictions of the Project's Proposition K funding. As approved, the Project is not restricted to providing free performances. The MND fails to analyze these considerations.

#### **V. The MND Improperly Piecemeals Environmental Review of the Project.**

CEQA requires that an environmental document include and analyze "the whole of [the] action," meaning the entirety of the project. (See *Santiago Water District v. County of Orange*, 118 Cal.App.3d 818, 829-30 (1981).) A lead agency may not "piecemeal" or "segment" a project by splitting it into two or more segments for analysis in separate environmental documents. This approach prevents environmental considerations from being "submerged by chopping a large project into many little ones – each with minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Comm'n*, 13 Cal.3d 263, 283-84 (1975).) The City contemplates that the Project would be constructed in two phases. Phase 1 refers to the development of the stage, undergrounding of existing utility lines, renovation of existing restrooms, installation of lighting, and ADA picnic and viewing areas. Phase 2 refers to the development of the ADA pedestrian bridge, improved ADA paths, path lighting, refurbishment of existing stairs, and ADA parking improvements.



While nothing prevents construction of a project in phases, the MND prepared for the Performing Arts Center Project fails to adequately consider the impacts of both Project phases. Contrary to the July 31, 2014 rebuttal, the MND does not appear to fully consider the impacts of constructing the Phase 2 portions of the Project, their likely environmental impacts, or mitigation measures to reduce or avoid those impacts. In particular, the Office of Historic Resources has not yet reviewed the visual impacts of the modular bridge proposed for Phase 2. The attached “Clearance Summary Worksheet” shows Phase 1 scope of work approved by Office of Historic Resources, but not Phase 2. (Attachment 3.) Accordingly, the OHR’s recommendations for mitigation of potentially adverse impacts to the Old Zoo’s historic resources cannot be incorporated into the Project as required by CEQA. The Phase 2 improvements are required to comply with the Americans with Disabilities Act, and their omission from the Project’s environmental review was improper. CEQA review exists to “furnish both the road map and the environmental price tag for a project, so that the decision maker and the public both know, before the journey begins, just where the journey will lead, and how much they- and the environment-will have to give up in order to take that journey.” (*NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.) Regardless of whether the City’s environmental review is improperly piecemealed, if information regarding the Project’s potential environmental impacts is not yet fully developed – as it is not yet for Phase 2 – approval of the Project is premature. Finally, if the City is approving the entirety of the Project now, before all of the Project’s potential impacts have been disclosed, there is no guarantee that later-discovered impacts will ever be mitigated.

## **Conclusion**

Considering its likely environmental cost, Appellants believe the Project is unnecessary. While Appellants support the spirit of free arts performances, myriad permanent stages remain available for outdoor performances in Griffith Park, and another performance space is set to open at the Los Angeles Zoo in 2015. Appellants specifically note that the Greek Theatre is required to provide a certain number of free concerts each year.

Appellants also welcome the discussion of alternative venues, whether new or existing, which can fulfill the Proposition K mandate for a Performing Arts Center for Children. The appellants welcome a full review of an enlightened project which can only be achieved through a complete environmental process, with the goal to reduce the adverse impacts to sensitive wildlife without degrading the visual nature of the historic Old Zoo.

While the Project could have been conditioned on mitigation measures that would significantly lessen its adverse environmental impacts, such as those recommended by biologist Dan Cooper (*see* Attachment 1), the Board of Commissioners failed to do so. Friends of Griffith Park, the Griffith J. Griffith Charitable Trust, and the Sierra Club Griffith Park Task Force thank the Committee for its review of this matter and request their support in this appeal. Appellants hereby incorporate their appeal letter of May 2, 2014, which includes the letters submitted to the City and its departments on May 22, 2013, January 22, 2014, and March 16, 2014. These letters contain additional information and greater detail regarding the basis of this appeal. (See, Attachment 2, Exhibits C-E.)

Thank you for your consideration of this matter.

Sincerely,



Michelle N. Black

Attachments:

1. Wildlife of Old Zoo, Griffith Park, prepared by Cooper Ecological Monitoring, July 30, 2014
2. Appeal Letter of May 2, 2014 with attachments
  - A. Report of General Manager No. 14-062, March 5, 2014
  - B. Minutes of Board of Recreation and Park Commissioners Meeting, April 2, 2014
  - C. Letter from Friends of Griffith Park to M. Martin, May 22, 2013
  - D. Letter from Friends of Griffith Park to P. Davis, January 22, 2014
  - E. Letter from Sierra Club – Angeles Chapter, Griffith Park Task Force, March 16, 2014
3. Clearance Summary Worksheet, dated July 31, 2014