



April 11, 2017

David Zaft, President  
Board of Animal Services Commissioners  
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RE: Agenda Item 6A, Tuesday, April 11, 2017  
Request for Continuance

Dear President Zaft and Commissioners:

On your agenda today is an item to consider the “Proposed Project Description for Proposed Citywide Cat Program Environmental Impact Report.” On behalf of The Urban Wildlands Group, Inc., (“UWG”) I strongly object to the presentation of this proposed major shift in the City’s approach to addressing problems raised by stray and feral cats in the guise of approving a project description. As set forth below, I do not believe this item can be considered or approved at this time because the substantial changes in the City’s policies on freeroaming cats have not been adequately vetted by this Commission or the general public, who only got a glimpse of the proposed changes when the Commission’s agenda was publicly released on April 7, 2017.

While the proposed action has been described as approving a “project description” for an Environmental Impact Report (“EIR”) for the ‘Citywide Cat Program’, this description is wholly inaccurate. This project is in fact nothing short of a major overhaul of the City’s approach to freeroaming cats and the TNR policy the City approved in 2005. The proposed changes need to be carefully vetted by this Commission and in the first instance to ensure its major goals and objectives are supported by a majority of Commissioners before the Project is ready to be evaluated pursuant to an EIR. The public too must be provided an adequate opportunity to weigh in on these important issues before the Commission finally approves a project that can be properly evaluated.

The documents lack some essential elements necessary for an adequate project description and the roadmap laid out for action is not proper from a CEQA perspective. As explained below, the project description does not pass muster because it fails to adequately identify project objectives. The Project itself is not adequately described and contains too many vague and undefined terms and loose ends to be sufficiently described in an EIR.

In addition, we oppose the adoption of a TNR program and the elements of the proposed Citywide Cat Program on the grounds of their adverse environmental impacts, as well-documented in the scientific literature and in our many previous letters to the City on this topic.

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## **The Staff Report fails to accurately describe the Project's history.**

At the outset, it is worth correcting the revisionist history being put forth by the Department in the "Background" section of the General Manager's memorandum. Ms. Barnette asserts that the City adopted a TNR policy in 2005 and the next pertinent action was The Urban Wildlands Group et al. filing suit in 2008 to force a CEQA review. This recounting of the history omits several pertinent facts. Following the 2005 adoption of the TNR policy, we, in 2006, requested of the Board of Animal Services Commissioners that review under CEQA be undertaken before the policy was implemented. The Board agreed to undertake CEQA review and directed the General Manager to do so. For two years, the General Manager promised that CEQA review would be forthcoming shortly, but at the same time went forward with several of the TNR program elements. UWG warned the City many times that the environmental review, which the City agreed was necessary, would need to be completed before the program elements were implemented. Suit was filed in 2008 only because the General Manager continued to implement the program in a secret and unofficial manner without doing the review. The judge found that the program was in fact being implemented in a way that was pervasive and then enjoined the City from further implementation unless and until CEQA compliance is satisfactorily achieved. Ms. Barnette left out the uncomfortable fact that the City was found to be illegally and secretly undertaking a project for which it had already agreed CEQA compliance was necessary.

The comments that follow are only a broad review of the fundamentally flawed and misguided program being proposed by the City. Further issues will be raised with supporting analysis as the process moves forward.

## **Process Description is Inconsistent with CEQA Guidelines**

The motion asks that the City Council direct staff to prepare an Environmental Impact Report for a proposed Citywide Cat Program. This request leaves out some important steps in the process for complying with CEQA. The proper course of action would be to consider in detail and then approve the revised Cat policy and program description and then direct staff to do any necessary compliance with CEQA. Moreover, lead agencies ordinarily begin the CEQA process by preparing an Initial Study, which would allow the City to identify those topic areas in which significant impacts are foreseeable and consequently the focus of the EIR. By specifying that an EIR be prepared along with the approval of the project description, the Commission is bypassing the Initial Study and leaving both the public and the drafters of the EIR in the dark as to likely significant impacts of the project and "reasons for determining that other effects would not be significant or potentially significant" (14 CCR Section 15060(d)).

## **Project Description Does Not Adequately Identify Project Objectives**

Assuming the preparation of an EIR for the proposed Citywide Cat Program, it will be necessary to devise and analyze alternatives to the proposed project for analysis (14 CCR Section 15126.6). The EIR must identify feasible alternatives that could avoid or substantially lessen the project's significant environmental impacts. (Pub.Res.Code §§ 21002, 21002.1(a), 21100(b)(4), 21150.) "A major function of an EIR 'is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official. An EIR's discussion of alternatives must include a discussion of a "no project" alternative to allow a comparison of the impacts of the project with

the effects of not approving the project.’’ (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (2007) 47 Cal.App.4<sup>th</sup> 713, 734; CEQA Guideline §15126.6(e)(1).)

The “EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages [,] or cannot be accomplished.” (Save Round Valley Alliance v. County of Inyo (2007) 157 Cal.App.4<sup>th</sup> 1437, 1458.) Alternatives analysis therefore requires evaluation of the environmental impacts of alternatives that would achieve “most of the basic objectives of the project” in a manner that reduces environmental impacts.

Nothing in the project description or revised TNR program provides a coherent description of the objectives of the proposed Citywide Cat Program. Without an adequate description of project objectives, the public cannot possibly know whether the City’s proposed project can achieve its ultimate goals, or even whether to support or oppose the proposed project. Without identifying project objectives, moreover, the drafters of the EIR will not be able to evaluate project alternatives, including those offered by the public.

It may be argued that the objectives of the project are the two stated goals of “No More Homeless Cats” and “Saving Animals’ Lives.” These are slogans, however, not project objectives. An objective must contain some specificity that articulates detail about future conditions and outcomes the program is intended to achieve. A statement of project objectives (not the means to achieve those objectives) is necessary to proceed in a CEQA process. An objective might be to reduce the number of freeroaming cats in the City of Los Angeles; a means to achieve the objective would be enforcement of mandatory spay-neuter regulations. The program description you are being asked to approve does not contain objectives and therefore legally sufficient alternatives to the program cannot be analyzed.

### **City Proposes to Abandon Commitment to Reducing Homeless Cat Numbers**

The Department today is asking the Commission to revise the 2005 TNR policy by eliminating the following important finding:

“... that the interests of humane treatment of animals, public safety and preservation of natural habitats dictates that no cat should live outside of a domestic home ...”

This would amount to a rather startling reversal of long-held City policy, and would be contrary to public and environmental health, by abandoning the well-established premise that cats should have homes. It is also inconsistent with the statements elsewhere in the very same document establishing a goal of No More Homeless Cats. Which is it, should there be no more homeless cats or is it acceptable for cats to live just anywhere? The actions proposed in the motion represent both positions.

To change a policy position in this manner, the Board should provide some rational basis for the change in position. What scientific evidence does the Board have that it is in the interest of public safety and the preservation of natural habitats to allow cats to run free? Such a change in

policy must be based on facts supporting the position, of which there are none, either in the report or in the best available scientific literature.

### **Owned Cat Increase Proposal Has No Articulated Connection to Program Goals**

The proposal includes a section that would increase the allowable number of cats per premises from three to five, without connecting it to the goals of the program. The ability to evaluate the effectiveness of this project element and to develop alternatives to it that would reduce environmental impacts depends on some articulation of the purpose of the change.

We note that the increase in the cat limit is fatally flawed as proposed because the mitigation built into the proposal (that if additional cats over three are kept, all cats must be kept indoors) cannot feasibly be enforced. We have commented in extensive detail on this proposal previously and attach a letter that summarizes and references those comments for the record.

### **Proposed Program Conflicts with City and State Law and Promotes Illegal Activity**

#### ***Nearly All TNR Violates Cat Kennel Ordinance***

The City's Cat Kennel ordinance, either as currently existing or as modified in the proposed program, specifies that only 3 (or 5) cats may be "kept or maintained" at a "lot, building, structure, enclosure or premises" (LAMC 53.00). TNR programs, by which cats are captured and then returned to a location where they are "cared for" according to the proposed findings in the proposed program, involve keeping or maintaining more than the limit of cats at a lot or premises. The proposed program does nothing to resolve the conflict between this ordinance and proposed TNR activities, and in fact the specification that if a person keeps more than three cats the additional two cats must be kept indoors increases the conflicts with potential TNR actions. Inasmuch as the City affirmatively states that it will "engage in" TNR as proposed, it must recognize that doing so will in almost all situations violate the existing Cat Kennel ordinance.

#### ***Promoting TNR by Outside Groups Supports Illegal Activity***

The proposed Citywide Cat Program would promote TNR by outside groups by providing them funding and releasing stray and feral cats to them. The program does not, however, address the conflicts between TNR and existing State laws and City ordinances. These include: violation of the Cat Kennel ordinance, violation of littering laws, violation of City law banning feeding nondomesticated mammalian predators, violation of State law on harassing wildlife through feeding, and potentially other land use and species protection laws (e.g., Endangered Species Act). The proposal is silent on what TNR and rescue groups would do with stray and feral cats once they are released from the shelter, but this does not absolve the City from responsibility for what is done with the animals. One can assume that they will be release somewhere outside, either in Los Angeles or other jurisdictions. And one can assume that the TNR and rescue groups will feed the cats where they are released, as described in the proposed findings. The City has an obligation to ensure that the release of these animals does not cause environmental impacts, which cannot be done with the program as currently specified. It cannot wash its hands

of the impacts and inconsistencies by ignoring them, but rather must provide a framework for compliance with applicable rules, regulations, and laws.

### ***Proposed Release of Freeroaming Cats Violates State Law***

The proposed checklist of actions to be taken in response to complaints about freeroaming cats concludes with the directive that if free-roaming cats are brought to the shelter, rescue groups and TNR groups would be contacted and the cat released to them. This violates state law in two ways.

First, the cat must be held for a period of time for the owner to redeem it, and the proposed process would allow rescue and TNR groups to take the cat right away, without allowing time for owner redemption first.

Second, the process treats stray and feral cats the same, when they are considered differently under State law. Although the California Food and Agriculture Code does give the right to adopt “stray” cats before they are euthanized (Sec. 31752(b)) to both adoption and rescue groups, it does not provide the same for feral cats, which are governed by a different section of the code (Sec. 31752.5). If a cat is thought to be feral it must be held for three days during which it can be redeemed by its owner or caretaker. Then, after a temperament test, if the cat is deemed to be truly feral, “the cat may be euthanized or relinquished to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal adoption organization.” Note that the cat can only be released to an animal “adoption” organization, not an animal “rescue” organization. Different sections of the same legislation specify rescue and adoption groups, so one must interpret the law as distinguishing between rescue and adoption groups. Any move to release feral cats to rescue groups not intending to adopt the animals out to homes is inconsistent with State law.

### **City Proposes to Promote Unscientific Information to General Public**

In proposing to train its staff in TNR, post pro-TNR propaganda on its website, and try to intimidate callers with nuisance cat issues into “resolving” their problems with TNR, the City stands at the precipice of promoting wholly unscientific and factually inaccurate information while suppressing scientific research showing the adverse impacts of freeroaming cats on public health, wildlife, and the environment and the ineffectiveness of TNR as a strategy for reducing the number of freeroaming cats. It would be like the Environmental Protection Agency posting information on its website that denied the causal connection between anthropogenic greenhouse gas emissions and global climate change. From an objective viewpoint, the same approach used to come to the consensus that global climate warming is caused by human activities, the City would be joining the ranks of conspiracy theorists and science deniers.

Scientific consensus is that freeroaming cats have an adverse impact on the environment. This is not debatable. The impacts are to wildlife (birds, reptiles, invertebrates) both directly (predation) and indirectly (disease transmission), to water quality through uncontrolled release of feces, and to public health.

Furthermore, in the 12 years since the City of Los Angeles adopted its first TNR policy, not a single scientific study has shown that TNR is effective at reducing the number of freeroaming cats in a city. Not one. This is not a case of the jury being out, with the profusion of TNR programs over the past decade someone should have been able to document any effectiveness at reducing freeroaming cat numbers. TNR simply is not a viable municipal policy to address freeroaming cat numbers. During the past 12 years, we have seen local jurisdictions that have adopted TNR, observed increased feral cat numbers and problems, and then had to figure out how to address that foreseeable outcome.

We have recommended and offered to work with the City on a set of steps that represent the most cost effective approach to minimize the number of freeroaming cats by reducing numbers at the source. Namely, the City should prioritize its resources as follows:

1. Increase low-cost/free spay/neuter for owned cats.
2. Enforce the mandatory spay/neuter provision for owned cats.
3. Require cat licensing for owned cats.
4. Enact a prohibition on roaming that is enforceable on complaint so that owners must take responsibility for their companion animals.
5. Enforce existing state and city regulations that ban feeding.

### **Process Excludes Input by General Public**

The agenda and this item were provided to the public when it was posted late last week (Friday) for a meeting scheduled on the following Tuesday morning. That is one business day in between. For a proposal with such pervasive and far-reaching implications, additional time for it to be circulated to the public would be appropriate, since no one other than those specifically tracking Animal Services Commission actions each month would become aware of it. I am on a neighborhood council as an Animal Services liaison for that Neighborhood Council, and on the general Animal Services mailing list, and received no notification that a major policy change was going to be considered. This failure to engage the general public but rather to tailor Board and Department operations in a manner that maximizes input from like-minded members of the animal advocacy community creates an echo chamber that excludes the majority of the public that is not obsessed with animal issues but expects a municipal shelter system to be available to take in stray animals as specified under law. A Friday release and Tuesday hearing is guaranteed to exclude all but the in-crowd, single issue stakeholders who, frankly, represent positions that are generally far out of the mainstream. A proposal such as this deserves far more review and consideration. Notification of this action should have been sent out to all those agencies, organizations, and individuals who commented on the previously circulated Mitigated Negative Declaration for the Citywide Cat Program. This did not happen. Those are obviously interested parties and simply calling this a new proposal does not make it so.

Sincerely,

*/s/ Babak Naficy*  
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Attorney for UWG

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