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Via Hand Delivery

August 25, 2015

Holly Wolcott
LA City Clerk
200 N. Main Street, Room 360
Los Angeles, CA 90012

Kevin James, Board President
Fernando Campos, Exec. Officer
Board of Public Works
200 North Spring Street, Room 356
Mail Stop 464
Los Angeles, CA 90012-4801

Re: **Appeal of 8/24/15 Approval of Board Public Works Tree Removal Permit
5253 Ben Avenue**

Dear Clerk Wolcott and President James:

Advocates for the Environment, a non-profit organization, with this Office as its representative, hereby appeals the referenced approval under *Pub. Res. Code* 21151c to the Los Angeles City Council.

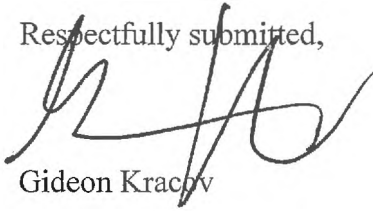
The basis for the appeal is, inter alia, Public Works should reconsider the Ben Ave. tree removal project with the actual California Environmental Quality Act Mitigated Negative Declaration document included in the staff report packet OR agree that it will include the actual underlying CEQA document (EIR, MND, etc.) in its staff report packets in all future cases where it relies on the underlying CEQA document to satisfy its CEQA for a tree removal approval.

If the Board decisionmakers are going to rely on the underlying EIR or MND (which they certainly can), they must actually see the EIR or MND document. It is not sufficient for the voting commissioners, who are the actual decisionmakers (not Urban Forestry staff), to read a few lines in the staff report summarizing the MND, especially since the public is only getting 3 days notice before the meeting, often has no way to timely get the MND without doing a public records request, and has no idea what the MND actually says if it is not in the staff report packet. *Pub Res Code* 15096(a) and (f) - "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved . . . Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration."

How can the voting decisionmakers "consider the EIR or Negative Declaration" if it is not in the Staff Report packet? That was unfortunately the case yesterday for the Ben Ave. approval.

The Appeal incorporates the attached comment letter, and the entire Administrative Record for the approval. Appellant reserves the right to provide supplemental legal and factual justifications for the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gideon Krachy', written over the typed name below.

Gideon Krachy

Attach.

Cc: Councilman Paul Kerkorian
200 N. Spring Street, Room 435
Los Angeles, CA 90012

DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET SERVICES
REPORT NO.1

Date: August 24, 2015
CD # 2

Honorable Board of Public Work
City of Los Angeles

Commissioners:

5253 BEN AVENUE – REQUEST BOARD AUTHORIZE A FEE PERMIT TO REMOVE THREE AMERICAN SWEETGUM (LIQUIDAMBAR STRACIFLUA) TREES FOR THE RECONSTRUCTION OF TWO DRIVEWAYS, CURB, GUTTER AND OFFGRADE PUBLIC SIDEWALK. TREE REPLACEMENTS ARE REQUIRED.

RECOMMENDATIONS:

That your Board:

1. Adopt the Findings of Fact (e) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT. The project site, as well as the surrounding area are presently developed with structures and do not provide a natural habitat for fish. However, the site does contain several trees that may provide habitat for protected birds. The Department of Fish and Wildlife has recommended that mitigation measure regarding nesting native birds be conditioned with the approval of the tract. On January 8, 2014, the City Planning Department issued Mitigated Negative Declaration No. ENV-2013-2150-MND. The Deputy Advisory Agency approved to modify the declaration by adding Construction Mitigation Measures No. CM-9 and CM-10 to address concerns submitted by the neighbors regarding the lack of street parking within the neighborhood. This Mitigated Negative Declaration reflects the independent judgment of the lead agency and determined that this project would not have a significant effect upon the environment provided the potential impacts are mitigated to a less than significant level. Review and approve this tree removal permit request for three American Sweetgum (Liquidambar Stryciflua) trees for the reconstruction of two driveways, curb, gutter and offgrade sidewalk. This finding is contained in the attached VESTING TENTATIVE TRACT MAP NO. 72157-SL.
2. Adopt Urban Forestry Division and Department of City Planning Condition 17. Prior to the issuance of any permit, a plot plan shall be prepared indicating the location, size, type, and general condition of all existing trees on the site and

within the adjacent public right(s)-of-way. All significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) non-protected trees on the site proposed for removal shall be replaced at a 1:1 ratio (a minimum of 8 trees) with a minimum 24-inch box tree. Net, new trees, located within the parkway of the adjacent public right(s)-of-way, may be counted toward replacement tree requirements. Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: 213-847-3077. All trees in the public right-of-way shall be provided per the current standards of the Urban Forestry Division the Department of Public Works, Bureau of Street Services. (VIM) This finding is contained in the attached VESTING TENTATIVE TRACT MAP NO. 72157-SL.

3. Approve the tree removal permit application for three street trees. Tree replacement on a 2:1 ratio and watering of all trees planted in the public rights-of-way for a minimum three year period is required.

TRANSMITTALS:

1. Copy of fax sheet sent to Council office.
2. Application for a tree removal permit.
3. Service Request #15011084.
4. Class A Permit A2014-001508.
5. Sidewalk repair plans.
6. Navigate LA site map.
7. Navigate LA parcel profile report.
8. Urban Forestry Inspection Form (dated 03/18/2015).
9. Photographs of the trees to be removed (four pages).
10. Two tree reports prepared by Lisa Smith, RCA.
11. Letter of Determination dated January 10th, 2014.
12. Posting notice and photographs of posting.

CONDITION:

The applicant shall plant three 24-inch box size Maidenhair (*Ginkgo biloba*) trees and provide watering to the trees for a minimum of three years and deliver three 15-gallon Western Sycamore (*Platanus racemosa*) trees to the Bureau's nursery to fulfill the 2:1 tree replacement policy.

The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval.

ALTERNATIVE METHODS AND OPTIONS EXPLORED:

The size, species, and location of the trees negate the possibility of tree preservation or relocation.

RECITAL:

Ben Rocca, property owner's representative, applied to the Bureau of Engineering (BOE) for a Class A Permit to reconstruct two driveways, curb, gutter and an offgrade sidewalk at 5237-5253 Ben Avenue to fulfill the BOE Letter of Determination condition (e) Repair or replace any off-grade or broken curb, gutter and sidewalk satisfactory to the City Engineer. The BOE informed Mr. Rocca the reconstruction of two driveways, curb, gutter and offgrade sidewalk may require street tree removals. Therefore, Mr. Rocca contacted the Bureau of Street Services (BSS) requesting the site be inspected to determine the relationship between the offgrade conditions and adjacent street trees.

A Bureau Arborist inspected the subject location on March 18th, 2015. The inspection revealed three fair condition American Sweetgum trees in front of the property measuring approximately twenty four to twenty eight inches in diameter by fifty-five feet in height and are growing in a five foot improved parkway.

The sidewalk is in various states of uplift and disruption. The roots and root crowns of the subject trees have significantly contributed to the defective condition of the public sidewalk. Surface roots are prevalent throughout the parkway and in some areas are growing several inches above the soil surface grade. Due to the minimal parkway size, the required root pruning to allow the trees to remain will significantly and adversely affect the trees' health and root structural integrity leaving them potentially unstable. Minimizing the sidewalk to allow the root zone enough space to eliminate the need for root pruning is not possible while still retaining adequate Americans with Disabilities Act (ADA) required access space. Therefore, driveway, curb, gutter and sidewalk reconstruction requires the removal of the subject trees.

The Board by approving this project shall adopt the Findings of Fact (e) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT. The project site, as well as the surrounding area are presently developed with structures and do not provide a natural habitat for fish. However, the site does contain several trees that may provide habitat for protected birds. The Department of Fish and Wildlife has recommended that mitigation measure regarding nesting native birds be conditioned with the approval of the tract. On January 8, 2014, the City Planning Department issued Mitigated Negative Declaration No. ENV-2013-2150-MND. The Deputy Advisory Agency approved to modify the declaration by adding Construction Mitigation Measures No. CM-9 and CM-10 to address concerns submitted by the neighbors regarding the lack of street parking within the neighborhood. This Mitigated Negative Declaration reflects the independent judgment of the lead agency and determined that this project would not have a

DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET SERVICES
REPORT NO. 1

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Date: August 24, 2015

significant effect upon the environment provided the potential impacts are mitigated to a less than significant level. Review and approve this tree removal permit request for three American Sweetgum (*Liquidambar styraciflua*) trees for the reconstruction of two driveways, curb, gutter and offgrade sidewalk. This finding is contained in the attached VESTING TENTATIVE TRACT MAP NO. 72157-SL.

Further, the Board shall adopt the Urban Forestry Division and Department of City Planning Condition 17. Prior to the issuance of any permit, a plot plan shall be prepared indicating the location, size, type, and general condition of all existing trees on the site and within the adjacent public right(s)-of-way. All significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) non-protected trees on the site proposed for removal shall be replaced at a 1:1 ratio (a minimum of 8 trees) with a minimum 24-inch box tree. Net, new trees, located within the parkway of the adjacent public right(s)-of-way, may be counted toward replacement tree requirements. Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: 213-847-3077. All trees in the public right-of-way shall be provided per the current standards of the Urban Forestry Division the Department of Public Works, Bureau of Street Services. (VIM) This finding is contained in the attached VESTING TENTATIVE TRACT MAP NO. 72157-SL.

The CEQA Guidelines for Street Tree Removal and Replacement and the project Letter of Determination that used in making these findings are on file with the Bureau and available for public review.

Jackie Keene, District Director, Second Council District Office, was informed of the tree removal request on June 1st, 2015. The Council office will notify the Bureau if any tree removal objections are received during the posting period.

The trees were posted on June 19th, 2015.

The applicant shall plant three 24-inch box size Maidenhair (*Ginkgo biloba*) trees and provide watering to the trees for a minimum of three years and deliver three 15-gallon Western Sycamore (*Platanus racemosa*) trees to the Bureau's nursery to fulfill the 2:1 tree replacement policy.

The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this approval.

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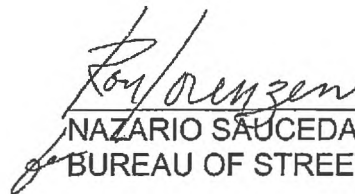
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Date: August 24, 2015

The applicant has been advised of the recommendations contained in this report.

(GM-----JC-----TT)

Respectfully submitted,



NAZARIO SAUCEDA, DIRECTOR
BUREAU OF STREET SERVICES

Prepared by:
Urban Forestry Division
Ext. 7-3077

JC/TT:as

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8/24/15 #1 Special BSS TREE REMOVAL – 5253 Ben Avenue

By: Advocates for the Environment, Land Protection Partners, Gideon Kracov, Dean Wallraff, Travis Longcore, Ph.D. and Catherine Rich

1. *BPW Is A CEQA “Responsible Agency” That Must Review The CEQA Document*– No CEQA document included in the agenda packet. This is a **CHRONIC ERROR** for tree removals, per se invalid, that must come to end. **If the Board is going to rely on a prior EIR or MND CEQA document for a private project to justify tree removal, it MUST include that actual EIR or MND CEQA document in its approval staff report to make sure the project tree removals match up to that studied before, and the Board should review it.** See CEQA Guideline 15096 (responsible agency decision maker must consider environmental document). This will also help the public review. A “responsible agency” must consider the environmental effects of the Project and feasible mitigation measures before it approves the Project. CEQA Guidelines Sections 15041(b), 15096(f)-(g); *Riverwatch v. Olivenhain* (2009) 170 Cal.App.4th 1186, 1206, (CEQA “responsible agency” erred in approving project without first reviewing and analyzing significant project impacts). It is true that a responsible agency ordinarily relies on the prior lead agency CEQA approval. However, the responsible agency is obligated to determine if changes to the project, changed circumstances of new information triggers a need to supplemental CEQA review. CEQA Guidelines Sections 15041(b), 15096(f)-(g). If other feasible mitigations exist, or if the project has changed significantly, the responsible agency cannot approve the project. *Id.*
2. *Pattern and practice of CEQA violations for tree removals.* All commentors’ public comment and agenda comments and the entire record for 8/24/15 items #3 and #4, 7/27/15 item #4, 7/24/15 item #9, 6/17/15 item #4, 6/5/15 item #1, 2/18/15 item #5 are hereby incorporated by this reference. *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566; *Californians for Native Salmon and Steelhead Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1427-29.