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May 5, 2025

VIA ELECTRONIC MAIL

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Hon. Marqueece Harris-Dawson, President
Los Angeles City Council
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**Re: City Council File 24-1488
City Council Closed Session To Discuss Issues Raised In Litigation
Crane Boulevard Safety Coalition v. City of Los Angeles
(Case No. 23STCP02375)**

Dear Honorable Councilmember President Mr. Harris-Dawson and Ms. Santos:

I write to bring to the attention of the members of the City Council and the Mayor's office some issues and evidence that have come to light in the above-referenced case. **Please see that this letter and all attachments are placed into Council File 24-1488.**

Because in closed session the City Council must look to the City's attorneys for information, this letter summarizes the issues from the perspective of my client which will provide you with more information as you consider whatever the City's attorneys chose to present to you. Like so many things in politics, the issues in this case arise from what seems, at first glance, might be minor matters – a proposal to build a luxury house. But occasionally something that seems minor, implicates much broader social, legal and political problems. This is such a case.

A Parallel From The Past

In 1972, there was what seemed to be a minor burglary at the Watergate building offices of the Democratic National Headquarters. Many of those on City Council or working in positions of City authority were not born or were just small children when the Watergate scandal consumed the Presidential administration of Richard Nixon. It ultimately led to a showdown

between the Justice Department investigating the possible involvement of the President in a whole series of dirty tricks and attacks on an “enemies list,” and the power of the Presidency as invoked by Mr. Nixon.

His office was equipped with automatic tape recorders that made a record of discussions in the Oval Office. The Justice Department subpoenaed the tape recordings and related documents as part of a criminal investigation that implicated the President’s involvement in authorizing the Watergate break-in of the Democratic National Headquarters. The President refused to turn over the tapes/documents claiming Executive Privilege – the need for secrecy of the President consulting with his deputies.

In a unanimous decision issued July 24, 1974, the Supreme Court ruled that Executive Privilege is not absolute and the public interest in maintaining secrecy for deliberative process with deputies was outweighed by the public interest in access to evidence necessary to investigate a criminal case. In its decision, the Supreme Court ruled that the Executive Privilege of the President had to yield to the interest in fair administration of the justice system.

Fifteen days after that Court decision, with a collapse of political support in the Congress, on the night of August 8, 1974, in a nationally televised address to the Nation, President Nixon announced he would resign from office the next day. On August 9, 1974, Mr. Nixon walked to a helicopter on the White House lawn, waved, and was flown away to resume his life as a private citizen – stripped of the power of the Presidency. It was a moment seared into the memories of those who saw it unfold. As set forth herein, there is a parallel between Watergate and issues in the above-referenced case.

The Duties of City Councilmembers To Hear Land Use Appeals Fairly

The petition/complaint in the Crane Boulevard case alleges that the Los Angeles City Council has a pattern and practice of conducting unfair land use and CEQA environmental appeals. Under our Constitution, persons whose property interests could be affected by the City’s approval of a land use project or failure to mitigate potential project harms have a right to procedural due process: a right to an adequate notice of a hearing, and the conduct of a meaningful hearing before an unbiased decision maker who bases his or her decision on the merits of the hearing found in the record (the City Council file) and listening at the hearing in a meaningful way. The law demands more than politics, lobbying, and vote counting when the City Council sits as a *quasi-judicial administrative law judge* in these hearings.

The City once had a Board of Zoning Appeals of appointed commissioners to hear these types of matters. This entity was abolished in the late 1990s. Now the ultimate decision maker on land use matters is the City Council, but often that means the PLUM Committee, and its recommendation to the full Council. But the investigation and discovery in this case reveals there are problems with the fairness of the PLUM Committee meeting land use hearings.

The Institutional Norm Of Deferring To The Local Councilmember

There exists at City Hall an institutional norm of City Councilmembers expecting their colleagues to defer to their position on matters within their Council District, and they will do the same for others, including land use appeals. But deferring to the position of the Local Councilmember (the councilmember in whose district a project or land use appeal lies) is unconstitutional and unfair when a fair hearing is owed. Each member of the City Council has a duty to exercise independent judgment, reviewing the record of the proceeding and giving fair attention to a land use/environmental hearing when persons whose interests could be harmed by an adverse decision.

Some newer Councilmembers have publicly claimed that the norm of deferring to other City Councilmembers is weakening. Unfortunately, this norm remains entrenched within the bureaucracy at City Hall. This case calls for City Council action to reform this process.

There Exists A Secret Pre-PLUM Meeting

Evidence developed thus far reveals that the deputies of the Chair of the City Council's powerful Planning and Land Use Management ("PLUM") Committee convene a secret "pre-PLUM meeting" about one week before the publicly noticed PLUM Committee meeting. There has been testimony that at this meeting, which I have seen can include invitations to up to 55 people, the assigned planners discuss and brief the deputies of the PLUM Committee Chair about the merits of the case.

There is sworn testimony that "sometimes" the Local Councilmembers' comments or voting position on the upcoming meeting item is disclosed in front of all of the pre-PLUM meeting attendees. Attending this meeting are representatives of the City Clerk assigned to the PLUM Committee, the Chief Legislative Analyst Roberto Mejia, and City Attorney's Office Deputies like Adrienne Khorasane or, for many years, Terry Kaufmann-Macias.

If The Pre-PLUM Meeting Is "Merely" Agenda Setting, Why Is It Not Public?

The City's attorneys have claimed in the Crane Boulevard litigation that the pre-PLUM meeting is merely an "agenda-setting meeting." Yet when asked to produce the meeting agenda, notes, and documents that come out of the meeting, the City's attorneys initially claimed all of it is attorney-client privileged (because the City Attorney's Office sits in the meeting?) or deliberative process (because there is a substantive discussion about the project or appeal merits?). These claims of privilege are inconsistent with the meeting merely being an "agenda-setting meeting."

It is routine for other cities in California who conduct an agenda-setting meeting to notice it under the Brown Act, and open it to public participation. Not in the City of Los Angeles. If the pre-PLUM meeting is as innocent as claimed, why does not the City Council reform this process

and order the bureaucrats to stop shrouding this process in secrecy? That is a policy question for the City Council raised by this litigation.

There Exists A Secret Chief Legislative Analyst Report

The next step in this “pre-PLUM process” is the Chief Legislative Analyst’s preparation of what is called “PLUM Notes.” According to testimony of Roberto Mejia, analyst to the PLUM Committee, he reads and distills each item on the PLUM Committee meeting agenda to 1 or 2 pages of summary. These summaries are compiled into a document called the “PLUM Notes” and the “PLUM Chair Notes.”

Mr. Mejia testified that the purpose of preparing the PLUM Notes for City Councilmembers was “for their convenience,” and that he prepares the PLUM Notes because Councilmembers and even their deputies cannot be expected to read the “voluminous materials in the Council File” involving each item of business. The PLUM Chair Notes are sent by email from Mr. Mejia to the PLUM Chair’s deputies usually Monday morning before a Tuesday afternoon PLUM Committee meeting, and similarly, the PLUM Notes are sent to the deputies of the other four members of the PLUM Committee at the same time.

In A Normal City The Chief Legislative Analyst’s Report Would Be Public

If the purpose of the PLUM Notes is “for the convenience” of City Councilmembers on the PLUM Committee, why does Mr. Mejia only send his PLUM Notes to deputies of PLUM Committee City Councilmembers, and not directly to the Councilmembers? One theory is that the City’s bureaucracy wishes to keep secret from the public and land use appellants Mr. Mejia’s summary of PLUM Committee items of business.

Government Code section 54957.5, a provision of the Brown Act, mandates that when written materials like a staff report are distributed to “all or a majority” of a legislative body (the PLUM Committee) within the 72 hour period prior to the meeting start time, the public agency is required to make such written materials available to the public at the same time to the public and make a hard copy of such written materials available at its offices for public inspection.

Has the PLUM Committee and Mr. Mejia been advised to only send Mr. Mejia’s PLUM Notes report to deputies of each of the Councilmembers under the theory that since the report has not been distributed to the Councilmembers themselves – just their deputies – that the City may credibly keep this document from the public? Why would not the PLUM Committee and Mr. Mejia be advised that delivery of the PLUM Notes to all or a majority of the Council Deputies is the functional equivalent to delivering this staff report to the PLUM Committee members themselves? The answer to these questions is another important issue for City Council.

But we know that this curious practice concentrates extreme unaccountable power in the hands of a mid-level City analyst. There is no accountability to the public because the City does not make the PLUM Notes available as provided in section 54957.5.

The Secrecy Of The Chief Legislative Analyst's Report Continues Before The Courts

In fact, the situation is even worse. Mr. Mejia's PLUM Notes may be the only thing that anyone reads on a land use appeal before the PLUM Committee. Thereafter, if a case goes to litigation, our office's investigation shows that the City's deputy attorneys who litigate land use and environmental cases do not disclose to litigants the existence of the PLUM Notes staff report, and they do not put it into the administrative record so that the reviewing court can see what may have been the most critical document related to decision making on the case. Under this scheme where the PLUM Notes remain unaccountable to anyone, even the court system, a mid-level City analyst, Roberto Mejia, holds unchecked power over the City's land use appeal process.

Some Of The PLUM Notes Are Passed On To PLUM Committee Members With Deputy Notes

Mr. Mejia emails the PLUM Chair Notes and the PLUM Notes to the PLUM Committee Deputies as two attachments: in PDF format which generally cannot be easily edited, and in Word format which can be edited. After each item in his PLUM Notes, Mr. Mejia inserts a line and leaves some open space beneath.

Some of the Council Deputies open the Word version of the PLUM Notes and they edit the report to add more information in that blank space provided by Mr. Mejia. Under Government Code section 54952.2(b)(2), the deputies are free to transmit information about the merits of an item on the PLUM Committee agenda, including a land use appeal, so long as they do not transmit the comments or position of another City Councilmember about the item of business.

This is the Brown Act's prohibition against serial meetings that deprive the public observing and participating in public decision making. This law prohibits the individual sharing of comments or positions of Councilmembers to prevent a legislative body like PLUM Committee from discussing or reaching a consensus on how to vote on an item outside a public meeting. The individual sharing of comments or positions of Councilmembers is a form of vote counting prior to the meeting, so that the deliberations occur before the public meeting instead at in the public meeting where the comments and positions of Councilmembers can be seen by the public.

The open meeting law's prohibition against sharing the comments or position of a City Councilmember outside of a public meeting also helps avoid a constitutionally unfair public hearing. If a City decision maker is constitutionally required to decide land use and environmental appeals based upon the record before the City and providing a meaningful hearing

at the PLUM Committee meeting, a vote merely based upon finding out the Local Councilmember's comments or position before the meeting, and entering the hearing room ready to defer to the Local Councilmember's position is an indication of a biased decision maker – one who has already made up his or her mind.

Therefore, if a deputy edits the PLUM Notes and transmits Mr. Mejia's PLUM Notes with one or more disclosures of the comments or positions of the Local Councilmember, and then includes a recommendation to vote in conformity with the Local Councilmember's comments or position, instead of keeping an open mind, there is a greater risk that the land use appellant's appeal will not be heard in an impartial process. If multiple deputies have obtained knowledge of the Local Councilmember's comments or position, and they also edit the PLUM Notes in similar ways, the land use or environmental appeal rights are undermined by a process that allows transmission of comments or positions of the Local Councilmember in ways that pervade the hearing process.

There Is Evidence Of Significant Transmission Of Comments Or Positions Of Local Councilmembers Before The PLUM Committee Meetings Over The Last Three Years

In discovery, the Crane Boulevard group sought copies of the PLUM Notes Edited By Council Deputies that would be evidence of the use of a second communication channel in which the comments or position of the Local Councilmember is transmitted to members of the PLUM Committee prior to meetings. The City asserted deliberative process (comparable to the Executive Privilege asserted by President Nixon in 1972) privilege as its basis for refusing to produce 152 emailed PLUM Notes edited by Council Deputies over a three and one-half-year period.

The Crane Boulevard group filed a Motion to Compel the City to produce the full sentences where the Council Deputy disclosed any comments or positions of another City Councilmember to their own PLUM Committee City Councilmember boss, and the full sentences where the Council Deputy recommended voting based upon knowing the comments or position of another City Councilmember.

On March 27, 2025, the Superior Court granted the Motion to Compel. The City is expected to produce 152 email/PLUM notes edited to disclose comments or positions of another Councilmember. Because each set of PLUM notes covers the 10 to 20 items on each PLUM Committee agenda, this evidence will establish hundreds of instances over the past several years where comments and positions of another City Councilmember was transmitted to other members of the PLUM Committee.

The City's Legal Argument Is The Same As The Failed Argument Former President Richard M. Nixon Made

Although the Court ordered the parties to negotiate a protective order for the initial production of these email/documents, the Court made clear that the Crane Boulevard group can file a motion to terminate the protective order if the information found in these 152 email/documents violates Government Code section 54952.2(b). This would clear the way to use these documents as evidence of an inherently unfair land use hearing process at trial.

I believe that the Court was on solid legal ground to order the production of these 152 email/documents, and that the Court would likely terminate any protective order that would allow this evidence use at trial and available for public inspection as a court record. These email/documents contain violations of the information sharing prohibitions of State Law.

The City's response in Court is to claim that it has a deliberative process privilege to be able to continue sharing comments or positions of other City Councilmembers as long as an email is not sharing the comments or positions of a majority of Councilmembers on an item of business, or shared with a majority of Councilmembers. This claim is dubious for the same reason that Richard Nixon could not assert Executive Privilege to withhold evidence of his own violations of law in the Watergate tapes: No one, not even the President of the United States, has a privilege with withhold evidence of his or her own violation of law. To claim otherwise is to say that the Rule of Law has no application to the Los Angeles City Council.

Nonetheless, that is the current position of the City in Court. I do not think that this legal argument can be credibly sustained.

This Case Revealed The City's Practice Of Auto-Deleting Google Chats (1-on-1 and Group) And Failing To Archive Non-Google Chats Used By High City Officials

In depositions, City employees admitted that they routinely use Google Chat to conduct their work for the City. No chat documents were produced in discovery nor placed on privilege logs. Employees testified that their Google Chats disappeared from their Google Account page about 24 hours after the chat occurs.

Upon further discovery, the City produced written memos and other documentary materials that showed the City intentionally set the Admin Console of the City's Google Workspace/Chats to turn "OFF" Chat History and prohibit anyone from turning Chat History "On." This guaranteed that all Google Chats (1-on-1 and group) would be deleted in about 24 hours. One memo to City users confirmed that the City knew that Google Chat (1-on-1 and group) would function as an "off-the-record" communications channel.

This conduct is entirely improper and it went on for many years because in litigation, at least in cases involving land use and environmental review, the City appears to have failed to notify litigants of the existence of Google Workspace, Google Chat, and its auto-deletion.

I appreciate the swift response of City Attorney Hydee Feldstein Soto and her executive office to the revelation of the auto-deletion of Google Chats. Within two days of a pre-litigation letter sent in connection with this case, she met with me and we discussed a process by which the City could begin to address these problems by ending the auto-deletion of Google Chat. After the City Council conducted a closed session with the City Council concerning this case on December 13, 2024 **pursuant to a City-executed stipulation and court order in this case**, a few weeks later, on January 14, 2025, the City ended its auto-deletion, and started archiving all Google Chats. Thus, between November 4, 2024, when I first indicated we would commence litigation against the City for failing to archive Google Chats, and make them available to litigants and public records requesters, Ms. Feldstein Soto and her executive office led the City on this issue.

There Is A Pending Motion To Impose Evidence And Issue Sanctions Against The City For Intentional And Malicious Evidence Destruction (See Exhibit 1)

Based upon the written evidence of the City's intentional configuration of its Admin Console for Google Chats to auto-delete within 24 hours, the Crane Boulevard group filed a Motion to Sanction the City for Spoliation Of Evidence. This motion is supported with substantial evidence of City misconduct, including actions taken by City actors to obscure the existence of Google Workspace ESI systems from litigants so as to allow this systematic evidence destruction to go on for many years without detection by litigants – up to the 14 years since the City installed Google Workspace in early 2010.

This motion asks the Court to assume that the lost Google Chats and unarchived chats on other private systems used by City officials involved the Project and the pre-PLUM process. Such a presumption, if adopted by the Court, would fill in the gaps in evidence based upon intentional and malicious deletion of evidence.

Given the history of prior violations of its duty to preserve evidence, the City faces the possibility that the Court will grant some relief to the Crane Boulevard group in the Motion for Sanctions.

The City Is Refusing To Answer Discovery That Supports A Motion For Sanctions Based Upon Practices Of Wholesale Destruction Of Chats Of Its 26,000 Users (See Exhibit 2.)

In support of its Motion for Sanctions, the Crane Boulevard group propounded Requests for Admission related to the history of the destruction of Google Chats, who decided to authorize the configuration of the City's system to carry out this destruction, and to what extent are officials of the City using non-Google chat applications to conduct City business without the City assuring that those ESI documents are retained for possible litigants.

Because the City is delaying the case by refusing to answer these 57 Requests for Admission, I just filed a Motion to Compel Further Responses on this discovery. The City has filed a Motion for Protective Order making legal arguments that the City's attorneys must know are without merit. The Court has been asked to order the City to answer this discovery without further delay, and to consider the answers in determining whether to impose evidence and issue sanctions in this case.

This Case Raises Issues Not Only About The City's Land Use Hearing Process But The Failure Of The Planning Bureaucracy To Enforce Environmental And Safety Requirements

This case unmasked concerning conduct by the City's bureaucracy. These practices have evolved over a long time. Elected officials, even those who get elected seeking to bring reform and positive change to the City, probably have not apprehended why PLUM Committee process is the way it is. It is difficult to change the City's bureaucracy and its entrenched practices. But these practice inappropriately reinforce **the power of the bureaucracy** to force elected officials to go along rather than ask difficult questions that would help protect public health and safety in land use decisions.

Over the years, dedicated people from the communities of Northeast Los Angeles, Washington/Glassell Park/Lincoln Heights/Montecito Heights/Highland Park/Monterey Hills/Hermon have watched with exasperation as the ability of the City to self-correct and rein in abuses of the bureaucracy have fallen away. In particular, areas within the Specific Plan of Mount Washington/Glassell Park are under siege. The City Planning Department has deliberately misinterpreted key plans to allow speculation developers and billionaire hedge funds to get more floor area than allowed in Very High Fire Hazard Severity Zones, Earthquake Induced Landslide Zones, all while waiving street widening requirements under the fire codes of the state. The Project in this case has all of these problems.

We all watched in horror on January 7-8, 2025 as the Pacific Palisade fire roared. Blame lies not as much with the Mayor and Fire Chief, who have been unfairly targeted. Greater responsibility falls upon the City Planning Department and those who have spearheaded the construction of developments in high fire hazard severity zones **without even minimal protections of existing residents**. This is how deferring to the position of one City Councilmember instead of asking informed questions puts people's lives at risk.

This Project challenged in this case was a tipping point of years of ill treatment of the community's concerns by a dismissive planning and City Attorney's office bureaucracy. The City long ago set forth the basis for restrictions on the intensity of development in high hazard areas of the City in the General Plan Framework, the Community Plans, and even Specific Plans.

But the City Planning bureaucracy, advised by rank-and-file deputy City Attorneys, rubberstamps oversized projects, ignores wild misrepresentations from owners/architects/permit

expeditors, and undermines basic planning, land use, environmental, and public health, safety and welfare principles.

This comes in the form of a tradition that real estate developers actually expect the City bureaucracy to waive street widening and building set back and side yard requirements in Very High Fire Hazard Severity Zones. This is a recipe for more disaster. We all were alarmed at seeing all of those vehicles abandoned on Sunet Boulevard during the attempts to evacuate Pacific Palisades, a scene where people fled on foot leaving vehicles behind. City Council and its planning commissioners ought to try to imagine what the evacuation and emergency response would look like on 20 feet wide Crane Boulevard with its steep grades, winding curves, and buildings allowed by the Planning Department to be constructed so close to the street.

The Planning Department and its commissions continue to build communities that will burn and kill more people. (See Exhibit 3.)

This could be changed IF the City Council exercises true and fair oversight of these processes either at PLUM Committee, or in the use of a new Board of Appeals that can carry out the important task of hearing appeals in a sincere and meaningful way.

If after discussion in closed session, the City would like to engage in a constructive discussion to end some of these practices, please contact me.

Sincerely,



Jamie T. Hall

Attachments:

Exhibit 1: Motion for Sanctions

Exhibit 2: Motion to Compel Requests for Admission, Set Three

Exhibit 3: Built to Burn

cc: Los Angeles City Mayor, Karen Bass
Los Angeles City Councilmembers

Channel Law Group, LLP

May 5, 2025

City Council File 24-1488

City Council Closed Session To Discuss Issues Raised In Litigation

Crane Boulevard Safety Coalition v. City of Los Angeles

(Case No. 23STCP02375)

EXHIBIT 1

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Superior Court of California,
County of Los Angeles
3/25/2025 8:47 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Tang, Deputy Clerk

Attorney for Petitioner
CRANE BOULEVARD SAFETY COALITION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CRANE BOULEVARD SAFETY COALITION,
an unincorporated association,
Petitioner,

v.

CITY OF LOS ANGELES, a municipal
corporation,
Respondent.

RACHEL FOULLON; IAN COOPER; and
ROES 1-25
Real Parties in Interest

Case No. 23STCP02375

**PETITIONER'S MOTION FOR
SANCTIONS AND EVIDENTIARY
HEARING ON SPOLIATION**

*Assigned for all purposes to:
Honorable Maurice A. Leiter
Department 54*

Action Filed: July 7, 2023

Date: June 6, 2025
Time: 9:00 am

Reservation ID: 972113921665

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NOTICE

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 6, 2025 at 9:00 a.m., in Department 54 of this Court located at 111 N. Hill Street, Los Angeles, CA 90012, Petitioner Crane Boulevard Safety Coalition (“Petitioner” or “CBSC”) will, and hereby does, move the Court to:

1. *Reasonably Foreseeable Litigation Impaired by Practice of Wholesale Records*

Destruction: Make findings that the City owed a duty to preserve records and evidence under Government Code section 34090(d), Los Angeles Administrative Code section 12.3(b)(6), Code of Civil Procedure sections 2023.010 and 2023.030 for reasonably foreseeable citywide litigation of which CBSC was one of those possible litigants in accordance with *People v. Zamora* (1980) 28 Cal.3d 88, 99–104 (weighing factors in the case that warranted imposition of issue/evidentiary sanctions against the City of Los Angeles for wholesale destruction of all unsustained complaints of excessive police force against officers from 1949 to 1974 that affected the fair trial rights of a whole class of future litigants including defendant Zamora), and in accordance with the principles of the discovery spoliation cases summarized in *Victor Valley Union High Sch. Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121 (affirming the trial court’s conclusion that the district was on notice of the likelihood of litigation when its employees saw a violation of district student safety rules and the risk manager reviewed the video and forwarded his report to the attorney assigned by the district’s insurance carrier, but setting aside the trial court’s sanction and remanding with directions regarding the various factors to weigh, and scope of discretion to be exercised in determining the sanction to remedy the harm from the evidence destruction) and factually similar federal cases like *In re Google Play Store Antitrust Litigation* (2023) 664 F.Supp.3d 981 (Google LLC violated its obligation to preserve chat evidence for litigation after being sued for antitrust violations and configuring its own internal Google Chat history to default OFF but asking its employees to remember to turn Chat History ON when discussing antitrust matters).

2. *Reasonably Foreseeable Litigation Impaired By Failing To Preserve Evidence When CBSC Began Exhausting CEQA Issues During The Administrative Process And City Planners Were Already*

1 *Consulting City Attorneys*: Make findings that, when, during the administrative proceedings for the
2 Project, Petitioner CBSC on May 4, 2021 filed its administrative appeal and complied with Public
3 Resources Code section 21177 to exhaust grounds to sue under the California Environmental Quality
4 Act (“CEQA”), and on July 12, 2021 the Channel Law Group filed its legal analysis of the
5 deficiencies of the City staff’s review, and supported that administrative appeal with detailed exhibits
6 and an expert geologic and structural engineering analysis further exhausting grounds to sue under
7 CEQA, and when the City’s privilege logs show it began at that time consulting its attorneys about
8 issues raised in the land use appeal documents (for which it has asserted attorney client privilege and
9 work product protection in this subsequently filed litigation), the City was on objective and subjective
10 notice of the likelihood of litigation, and had an affirmative duty going forward from May 2021 to
11 preserve all Google Chats and non-Google text/chat applications being used by the record custodians
12 for the Project, in accordance with the principles of discovery cases summarized in *Victor Valley*
13 *Union High Sch. Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121 and related federal and state
14 cases.

15 3. *Litigation Impaired By Failure To Preserve Evidence Even After Being Sued And On*
16 *Specific Notice Of Allegations That The City’s pre-PLUM Process Included Communications Of The*
17 *Comments Or Positions of the Local Councilmember As A Basis To Defer To That Position Instead of*
18 *Conducting A Fair Hearing Process Under Constitutional Principles*: Make findings that, at a
19 minimum, after initiation of this Petition/Complaint on July 7, 2023, and its amendment to include
20 pattern and practices like the pre-PLUM process allegations on August 7, 2023, the City was on
21 objective and subjective actual notice of the nature of the litigation, and owed an affirmative duty
22 going forward to archive all Google Chats and non-Google text/chat applications being used by the
23 records custodians related to the Project and pre-PLUM process communications activities, including
24 those conducted on chat conversations, in accordance with the principles stated in *In re Google Play*
25 *Store Antitrust Litigation* (2023) 664 F.Supp.3d 981 (Google LLC violated its obligation to preserve
26 chat evidence for litigation after being sued for antitrust violations and configuring its Google Chat
27 history to default OFF but asking its employees to remember to turn Chat History ON when
28 discussing antitrust matters), and in accordance with the principles of discovery cases summarized in

1 *Victor Valley Union High Sch. Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121, and other cases.

2 4. *Intentional Records Destruction Was Malicious¹ Because Of The Time Period Over Which*
3 *It Occurred And It Was Kept In Place By Conduct Of Deputy City Attorneys Who Exercised*
4 *Discretion To Deliberately Not Disclose To Litigants The Existence Of The Google Workspace*
5 *System Or That The City Was Destroying Google Chats Even After Being Sued: Make findings that*
6 the City's intentional configuration of its Google Workspace Admin Console to fail to archive Google
7 Chats, its intentional failure to have a policy or regulation requiring retention of all non-Google text/
8 chat conversations used for City business, the City's January 14, 2025 written statement
9 acknowledging that texts/chats are subject to litigation discovery, and the actions of City officials to
10 obscure the existence of the Google Workspace and chat destruction over many years, are all actions
11 justifying the court's imposition of limited evidence and issue sanctions to remedy the prejudice on
12 Petitioner CBSC's ability to prosecute its case.

13 5. *Unless The City Refuses To Comply With A Court Order To Produce Witnesses Or*
14 *Discovery Related To Intentionality/Maliciousness Of The Records Destruction, A Terminating*
15 *Sanction Is Not Justified: Balance the factors of this case to determine that a terminating sanction of*
16 any cause of action or individual claim in the Petition/Complaint under Code of Civil Procedure
17 section 2023.030 or the Court's inherent authority to sanction egregious discovery misconduct, would
18 not be justified in this case, based upon the facts as they exist at the time of this motion, and a less
19 severe sanction would be more appropriate. However, if the City continues to press its meritless
20 motion for protective order from having to answer requests for admission related to intentionality/
21 maliciousness, or refuses to produce witnesses/documents for any ordered evidentiary hearing, this
22 sanction should be reconsidered.

23 6. *A Monetary Sanction, Except To Reimburse CBSC Its Costs And Attorneys Fees In*
24 *Researching And Prosecuting This Motion, Cannot Sufficiently Address Harm To CBSC's Case:*
25 Balance the factors of this case to determine that a monetary sanction, the least severe sanction under
26 Code of Civil Procedure section 2023.030 and the Court's inherent authority to sanction egregious
27

28 ¹ "Malicious" is a term of art used in *People v. Zamora* (1980) 28 Cal.2d 88.

1 discovery abuse, except to reimburse CBSC its costs and attorneys fees in researching and
2 prosecuting this motion, is not severe enough, and fails to address the harm to Petitioner CBSC's case
3 from the City's intentionally malicious acts of allowing destruction of records and failures to preserve
4 evidence that the City clearly understood it was destroying every day as it failed to preserve City
5 official/employee text/chat conversations conducting City business.

6 *7. An Evidentiary Sanction Presuming That Unarchived Chat Conversations Were Used To*
7 *Discuss The Project, The FAR Interpretation Of The Specific Plan, and pre-PLUM Comments and*
8 *Position Sharing And Barring City Evidence To The Contrary:* Balance the factors of this case to
9 determine under Code of Civil Procedure sections 2023.010 and 2023.030, and the Court's inherent
10 authority to sanction egregious discovery abuse, that because of the City's intentional and malicious
11 destruction and failure to archive all text/chat conversations that could corroborate such claims, the
12 Court will presume that text/chat communication channels were used by the City to discuss the issues
13 in this case and that the City is prohibited from offering any evidence (deposition, declaration, or
14 otherwise) that City officials and employees did not use Google and non-Google text/chat applications
15 to discuss the issues in the case, including, but not limited to, the Project, the City's practices for
16 interpretation of the Mount Washington/Glassell Park Specific Plan, or the City's practices related to a
17 pre-PLUM process involving multiple communication channels through which City officials and
18 employees transmitted "comments or positions" of the Local Councilmember outside of a public
19 hearing.

20 *8. An Evidentiary Sanction Presuming That The Loss Of The Discussions From The Destroyed*
21 *Texts/Chats Were Prejudicial To CBSC's Ability To Present Some Evidence In The Case And That*
22 *Such Lost Evidence Would Have Been Adverse To The City So That The Court May Consider These*
23 *Presumptions In Conjunction With Whatever Evidence Survives That CBSC Can Cite To The Court:*
24 Balance the factors of this case under Code of Civil Procedure 2023.030 and the Court's inherent
25 authority, to conclude, consistent with *People v. Zamora* (1980) 28 Cal.3d 88 that the City's
26 intentional and malicious wholesale destruction of a category of records affecting an large group of
27 potential future litigants gives rise to a presumption of prejudice to CBSC, even though the record
28 here establishes malicious intent once the City was aware of CBSC exhausting its administrative

1 remedy under Public Resources Code section 21177 after May 2021 and it continued to fail to
2 preserve all chat conversations of the relevant records custodians for 24 months as to the Project
3 issues until the City Council decision on May 10, 2023, and once the City was aware of the pattern
4 and practice allegations upon the filing of the First Amended Petition/Complaint on August 7, 2023,
5 and it continued to fail to preserve all chat conversations of the relevant records custodians for 16 ½
6 months as to the pattern and practice issues.

7 9. *An Evidentiary Sanction Ordering The City To Release All Emails On The City's Privilege*
8 *Log(s) Asserting Official Information/Deliberative Process/Mental Process Privilege*: Balance the
9 factors of this case to determine under Code of Civil Procedure section 2023.030 and the Court's
10 inherent authority, that to remedy the presumed loss of text/chat conversations about the Project, the
11 Court will reweigh the official information/deliberative process balancing test under Evidence Code
12 section 1040, and find that CBSC's need for this evidence and the public interest in release of this
13 information overbalances the City's public interest in secrecy due to the City's intentional and
14 malicious destruction and failure to archive all Google and non-Google text/chat records of City
15 officials and employees about the Project or pattern and practices over the course of many years.

16 10. *Order A Limited Evidentiary Hearing Similar To That Conducted By The Federal Court In*
17 *The Case Of In re Google Play Store Antitrust Litigation (2023) 664 F.Supp.3d 981*: If, after reading
18 the briefing for this motion, the Court concludes it needs more than the "dry record" before it in the
19 briefing (id. at 982), set a limited evidentiary hearing to review documents the Court orders produced
20 to CBSC, order the City to produce Persons Most Knowledgeable as listed on the proposed Court
21 Order for Limited Evidentiary Hearing concurrently lodged with the Court.

1 The Motion will be based on this Notice and Motion, Petitioner’s Memorandum of Points and
2 Authorities in support thereof, the declaration of Jamie T. Hall, the contents of the Court’s files for
3 this proceeding, and upon such other and further oral/documentary evidence as may be presented at
4 the time of the hearing on the Motion.

5
6 Dated: March 25, 2025

By: /s/ Jamie T. Hall

Attorney for Petitioner
Crane Boulevard Safety Coalition

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 Petitioner Crane Boulevard Safety Coalition (“CBSC”) respectfully submits its brief in
4 support of its Motion for Sanctions and Evidentiary Hearing against the Respondent City of Los
5 Angeles (“City”).

6 **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

7
8 The City of Los Angeles intentionally configured its Google Workspace Administrator’s
9 Console to guarantee that every Google Chat (1-on-1 or group) conversation of its City elected
10 official/employee users was (1) created/transmitted, (2) retained in the Google Workspace users’
11 account, and (3) deleted within about 24 hours. The City knew that it was destroying evidence
12 because it actively promoted these chats as “off the record” work conversations.²

13 Relevant to the spoliation issue was a First Amendment Coalition (“FAC”) lawsuit. As part of
14 the 2017 settlement, the City Council took action expressly acknowledging that its records must be
15 retained a minimum of two years under [Government Code § 34090](#) and Los Angeles Administrative
16 Code (“LAAC”) § 12.3. The City agreed to transparency, including that if it destroyed any records
17 after holding them less than two years, it would cite on a Records Disposition Schedule any provision
18 authorizing destruction in the shorter time period, and that if such proposed destruction occurred less
19 than 5 years after the settlement, the City would give notice to FAC.

20 The City had an obligation to preserve evidence about the Project in this case, and its
21 compliance with CEQA, because the City knew that projects challenged in the administrative process
22 could foreseeably go to litigation. The City’s destruction of all of this evidence deprived CBSC of all
23 chat conversations even though such communications about the geologic safety of the Project was

24
25 ² CBSC obtained printouts of the City’s Google Chat Admin Console during April 2019, and on or
26 before January 9, 2025. On those dates, the City’s configuration showed Chat History turned “OFF,”
27 and the ability of any user to turn Chat History “ON” ***was prohibited***. This configuration guaranteed
28 destruction of these Electronically Stored Information records without archiving them and created a
secret channel for City business communications. No one would be accountable for what they said or
did in these messages, because they would not exist practically long enough to obtain for a public
records act request, litigation discovery, or an internal City investigation.

1 being discussed in emails at the same time. At a minimum, the City was on notice to turn on its
2 Google Chat History for high City offices when the First Amended Petition/Complaint was served in
3 August 2023 alleging that the City had and has a pattern and practice of communicating positions of
4 the Local Councilmember among the members of the Planning and Land Use Management
5 (“PLUM”) Committee and their deputies.

6 The City’s disappearing Google Chats would be an “off the record” way to skirt [Gov. Code,](#)
7 [§ 54952.2](#) in service of a long-time norm at City Hall that City Councilmembers will usually defer to
8 the wishes of the Local Councilmember – even in a land use/CEQA appeal. Yet from August 2023 to
9 January 14, 2025, during the pendency of this case, the City failed to take steps to preserve these chat
10 conversations. Had the City done so, it would have been obligated to search for and produce non-
11 privileged chat communications in response to discovery requests related to the pre-PLUM cause of
12 action.³ But the City continued destroying all Google and non-Google Chats (1-on-1 and group) in the
13 entire City for 16 ½ more months. The City breached its evidence preservation duties.

14 [Code of Civil Procedure sections 2023.010](#) and [2023.030](#), and this Court’s inherent authority,
15 enable it to impose sanctions for the City’s intentional and malicious evidence destruction. CBSC
16 does not seek the least serious sanction (monetary), nor the most serious sanction (terminating). [Victor](#)
17 [Valley Union High Sch. Dist. v. Superior Court \(2023\) 91 Cal.App.5th 1121](#), and other cases strongly
18 support the imposition of evidentiary and issue sanctions to attempt to redress the prejudicial harm the
19 City inflicted on CBSC’s case through its spoliation.

20 CBSC believes there is now sufficient evidence to support sanction, however, as it stated in its
21 November 1, 2024 Motion to Extend the Discovery Cutoff (withdrawn after stipulation of City to
22 extend cutoff), to make sure, CBSC pursued further discovery to gather full evidence of the
23 spoliation. In January, CBSC propounded RFAs to assure it had that evidence. The City refused to
24 answer two-thirds of the RFAs, and has filed for a protective order – further delaying answers to
25 direct requests relevant to the intent and maliciousness of the spoliation. If the Court does not feel the

26 ³ The City claims it has a privilege to withhold each **email** that contains the transmission of the
27 comments or position of the Local Councilmember to other deputies or members of the PLUM
28 Committee. (Pending Motions to Compel, March 27, 2025.) Chat conversations are equivalent to an
email, having no limit on their length, content, or attachments, used to conduct City business.

1 existing evidence is quite sufficient to sanction now, CBSC respectfully requests that the Court
2 schedule a limited evidentiary hearing before itself where it orders the City to produce PMKs on
3 topics proposed by CBSC in its motion notice. Other courts in this situation have ordered limited
4 evidentiary hearings to expedite getting to the facts of spoliation. CBSC has pursued formal discovery
5 to obtain answers about the chat destruction, but once again the City disrupts progress toward trial by
6 refusing to answer the RFAs. An evidentiary hearing, if needed, will expedite getting to trial.

7 Accordingly, CBSC respectfully requests imposition of the evidentiary and issue sanctions set
8 forth in this motion, or that the Court schedule a limited evidentiary hearing to help determine facts
9 related to the City's alleged spoliation conduct, and then rule on this sanctions motion.

10 **II. FACTUAL SUMMARY.**

11
12 On November 20, 2009, the City entered into a contract with a contractor/Google LLC to
13 transition the City from its "outdated" email system to Gmail and "Google office automation and
14 collaboration tools." Hall Decl., ¶ 3, **Exh. 1** (Contract cover page). The preamble stated that the City
15 would receive "Google Apps Premier Edition" described as "Google Docs and Mail based e-mail,
16 collaboration, eDiscovery, archiving, video conferencing, as well as other communicative and desktop
17 applications" for over 40 non-proprietary departments of the City representing up to 30,000 users. Id.,
18 p. 3 (preamble) The contract set out minimum capabilities for email, contacts, calendar, e-Discovery,
19 archive/backup, system administrator, integration on mobile devices, security, instant messaging,
20 video conferencing, virtual drives, and office products (word processing, etc.). Id. pp. 4–8.

21 In buying Google Apps Premier Edition (now Google Workspace) for its users, the City was
22 purchasing an off-the-shelf private business "Software as a Service," **but using it in a public agency**
23 **setting**. Id., pp. 3 & 24. For the City's administration of its Google Workspace it required: "Ability,
24 from the administrative console (tool provided by Contractor), to: Fully manage all City accounts
25 within the City network, including but not limited to addition, deletion, manipulation and suspension"
26 and ability to manage all collaboration tools including chat instant messaging. Id. pp. 6–7. And for the
27 archive, the City required: Ability to archive and retrieve or e-Discover "data based on content,
28 sender, recipient, and/or other metadata with different archival periods **per City policy or legal**

1 **requirements.”** Id., emphasis added. Google’s Standard Terms of Agreement attached to the City’s
2 contract made clear that the Customer manages the Workspace, not Google:

3 “Customer may specify one or more Administrators through the Admin Console who
4 will have the rights to access the Admin Account and to administer the End User
5 Accounts. . . . Customer agrees that Google’s responsibilities do not extend to the
6 internal management or administration of Customer’s electronic messaging system or
7 messages and that Google is merely a data-processor.” Id., p. 103.

8 The most recent version of this provision (January 2025) is substantially the same:

9 “3.5 **Administration of Services.** Customer may specify through the Admin Console
10 one or more Administrators who will have the right to access Admin Accounts.
11 Customer is responsible for (a) maintaining the confidentiality and security of the End
12 User Accounts and associated passwords and (b) any use of the End User Accounts.
13 Customer agrees that Google’s responsibilities do not extend to the internal
14 management or administration of the Services for Customer or any End Users.” Hall
15 Decl., ¶ 4, **Exh. 2.**

16 Google’s terms make clear that the customer controls operation of Google Workspace, not Google. Id.

17 At some point between the 2010 rollout of Gmail and chat messaging to the City’s user base
18 and April 2019, the City used its Admin Console to activate Google Hangouts (the predecessor to
19 Google Chats) for its user base. Hall Decl., ¶ 5, **Exh. 3.** In order to activate, the City had to check
20 mark some option boxes on the Admin Console. Id. The City chose to turn “OFF” the Chat History,
21 and to checkmark the option to prevent any employee from switching Chat History ‘ON’ for Google
22 Hangouts (1-on-1 and group). Id. According to Google’s online documentation, this configuration
23 choice resulted in these chats not being archived within 24 hours. Id., **Exh. 4.**

24 In August 2016, the First Amendment Coalition (“FAC”) sued the City over its failure to
25 preserve Council office records of Tom LaBonge when he left office. Hall Decl., ¶ 6, **Exh. 5.** On
26 September 20, 2017, the City Council approved a motion authorizing the City Attorney to settle the
27 case (id., **Exh. 6**), and the settlement agreement signed by the parties in July 2017 was ratified. Id.,
28 **Exh. 7.** Relevant key terms of settlement were:

“The City agrees that [Government Code section 34090](#) does not allow for the
destruction of records less than two years old. . . . The City agrees to amend all
currently existing Records Disposition Schedules . . . (and include on all future
Records Disposition Schedules) by adding the following . . . at the top . . . ‘All records
shall be retained for a minimum of two years, **including records not included in the**

1 ***Schedule Items listed below*** unless a shorter period is specified by law or a longer
2 period is otherwise required by law, or unless, consistent with state law, a different
3 period of retention is established by order or resolution of the City Council.’ Any
4 provision of law on which the City relies on to implement a records disposition period
5 of less than two years shall be enumerated in the Records Disposition Schedule.”

6 Seven years after this settlement, most of the City’s Records Disposition Schedules ***have never been***
7 ***amended to comply***. For instance, the Information Technology Agency (“ITA”) schedule was last
8 amended nearly 10 years ago, and the certification that all of its records are retained at least two years
9 has not been made before the City Council since the 2017 settlement with FAC. Hall Decl., ¶ 7, **Exh.**
10 **8**. The ITA schedule fails to list the Google Chats or non-Google chat application conversations as
11 authorized for deletion by City Council. Id.

12 On July 16, 2020, ITA sent a notice that the City was transitioning all users from Google
13 Hangouts to the new Google Chat application. Hall Decl., ¶ 8, **Exh. 9**. The City told users: “Like
14 Hangouts, ***Chat is off-the-record for direct and group messages***, but Chat Rooms are on-the-record.”
15 Id, emphasis added. The exhibits to this memo show examples where the application tells the user
16 where they type messages: “History off: messages deleted after 24 hours.” Id. On April 6, 2022, ITA
17 sent a notice that reaffirmed nearly two years later, the City still had Chat History for Google Chat
18 turned “OFF” and no one could turn it “ON”. Id., **Exh. 10**. The memo stated: “When you message a
19 person [or a group of persons] in Google Chat, your conversation is not saved and will automatically
20 delete after 24 hours. Id. A note appears in the message stream that says history is turned off. A
21 prompt appears in the compose box that says ‘History is off.’” Id. On January 9, 2025, the City
22 produced a screen printout of the Admin Console for Google Chat that it indicated was “current.” Id.,
23 **Exh. 11**. The printout CBSC received on January 9 depicted Google Chat History turned “OFF” and
24 no one could turn it “ON” Id.

25 On November 4, 2024, CBSC served a pre-litigation letter stating it would move to amend/
26 supplement the petition/complaint in this case to add a simple pattern and practice claim that the City
27 was violating [Gov. Code, § 34090, subd. \(d\)](#) and record retention obligations by citywide mass
28 destruction of all Google Chat (1-on-1 and group) conversations, ***even though Google offers the***
option to the City to archive all of them. Hall Decl., ¶ 9, **Exhs. 12**. The notice asked the City to note
the attached federal court decision finding Google LLC itself liable for spoliated evidence for the way

1 it configured its internal Google chats. Id., see attached opinion. The City entered a stipulation that
2 acknowledged to this Court it was investigating and would go to closed session with City Council to
3 discuss the November 4 pre-litigation notice. Id., **Exh. 13**. But after that closed session and the
4 holidays, instead of engaging with CBSC, on January 14, 2025, the City issued a memo to its users
5 stating Chat History had been turned on for Google Chats and would thereafter be archived. Id., **Exh.**
6 **14**. The City cautioned users that these chats **would now be subject to public records requests,**
7 **litigation discovery, and internal investigations** demonstrating it knew the significance of
8 destroying these records all the time it kept it from litigants. Id.

9 Discovery documents showed officials were using non-Google text/chat applications as
10 another evasion of archiving, including likely pre-PLUM communications. Hall Decl., ¶ 10, **Exh. 29**.
11 On January 16, 2025, CBSC served a litigation hold letter on the City demanding that all existing
12 Google Chats be archived, *as well as imposing an archive/hold on all non-Google third-party text/*
13 *chat applications used in high City offices*. Id., **Exh. 15**. CBSC demanded that City officials
14 immediately preserve any Google Chats that remained because its refusal to admit it was violating
15 records retention laws established that the controversy remained live. Id.

16 The City refused to implement a full litigation hold and archiving of all text/chat applications
17 used by high City officials. Hall Decl., ¶ 11, **Exhs. 15, 16, 17, 18 & 19**. CBSC found itself in a unique
18 position of knowing every day relevant evidence related to the City's response to the Palisades
19 wildfire were not being archived and saved. Id. CBSC then filed its motion for leave to amend/
20 supplement the petition/complaint asking this Court to add a pattern and practice claim of the City
21 failing to have a permanent policy to archive records and preserve evidence of reasonably foreseeable
22 litigation in the form of Google Chats and non-Google text/chat applications in use by City Officials.
23 Id., **Exh. 19**. The City just admitted that it has no policy requiring preservation of all chats/texts, and
24 that the Mayor's text/chat messages for years, including those for the Palisades fire, are gone. Id.,
25 **Exh. 20**.

26 On January 24, 2025, CBSC served Requests for Admission, Set Three, and a Declaration in
27 Support. Hall Decl., ¶ 12, **Exh. 21**. The RFAs were broken down into a step-by-step inquiry to
28 elucidate evidence of who in the City made the decision to configure Google Chat to delete within 24

1 hours, or to use non-Google text/chat applications which are not archived by the City as preservation
2 of records or evidence. Id. The RFAs also sought evidence to demonstrate that the City’s highest
3 officials used these chat channels to conduct City business after they were created. Id. This grew from
4 CBSC’s November 1, 2024 motion to extend discovery to prepare this motion. Hall Decl., **Exh. 30**.

5 On February 13, 2025, only one week before responses were due, the City sent a letter
6 objecting to two thirds of the RFAs, those focused on the intentionality/maliciousness of the
7 spoliation of evidence in this case. Hall Decl., ¶ 13, **Exh. 22**. On February 19, 2025, CBSC illustrated
8 how the City’s refusals to answer RFAs were obstruction and trying to run out the clock before the
9 current discovery cutoff. Id., **Exh. 23**. Later, after a meet and confer teleconference, CBSC withdrew
10 some RFAs, but the City persisted in its objections. Id. The City scheduled its proposed motion for
11 protective order for a March 17, 2025 IDC. Id. CBSC informed the City that it needed the RFA
12 evidence to assure evidence to support a motion for sanctions. Id., **Exh. 23**. Later, CBSC just told the
13 City it would file its motion for sanctions and let this Court decide if it has enough evidence now, or if
14 an evidentiary hearing should be conducted. Id.

15 To this end, CBSC pointed out how the City’s intentional evidence destruction, likely needed
16 by a whole class of litigants comparable to what the City had done in *People v. Zamora* (1980) 28
17 Cal.3d 88, and that CBSC was in the class of litigants harmed by such wholesale evidence
18 destruction. Id. Hall Decl., **Exh. 23**. After the March 17, 2025 IDC, CBSC filed this motion.

19 **III. STANDARD OF REVIEW.**

20
21 “Orders regarding discovery are reviewed under the abuse of discretion standard.” *Deck v.*
22 *Developers Investment Co., Inc.* (2023) 89 Cal. App. 5th 808, 823. “[T]he abuse of discretion standard
23 measures whether, in light of the evidence, the trial court’s decision ‘falls within the permissible range
24 of options set by the legal criteria.’” *Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th
25 1076, 1089. An error of law by the trial court is also an abuse of discretion. *In re Tobacco II Cases*
26 (2009) 46 Cal.4th 298, 311.

27 A seminal case involving other City egregious discovery misconduct provides guidance for all
28 types of sanctions. *City of Los Angeles v. PricewaterhouseCoopers, LLP* (2024) 17 Cal.5th 46

1 (“PwC”). In *PwC*, our Supreme Court reconfirmed that trial courts have two sources of authority to
2 sanction for discovery misconduct that goes beyond the specific-method sections of the Discovery
3 Act: *Code Civ. Proc., § 2023.010/2023.030, and inherent authority*. *Id.* at 62–64. Section 2023.030,
4 subdivisions (b) to (e) authorize trial courts to order “issue sanctions, evidence sanctions, terminating
5 sanctions, and contempt sanctions” beyond the monetary sanctions of 2023.030(a), imposed for
6 violations of the specific-method sections. *Id.* at 62. The Court quoted subdivision (b) as an example
7 of broad authority to sanction when the conduct goes beyond violation of the specific-method
8 sections:

9
10 “The court may impose an issue sanction ordering that designated facts shall be taken
11 as established in the action in accordance with the claim of the party adversely affected
12 by the misuse of the discovery process. The court may also impose an issue sanction
by an order prohibiting any party engaging in the misuse of the discovery process from
supporting or opposing designated claims or defenses.” *Id.*

13 Beyond the statutory authority to sanction, the Supreme Court cited cases that imposed sanctions
14 based upon inherent authority. *Id.* at 63 (“*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155
15 Cal.App.4th 736, 761[cite][terminating sanction]; *Peat, Marwick, Mitchell & Co. v. Superior Court*
16 (1988) 200 Cal.App.3d 272, 287, fn. 8, 289 [cite][evidentiary sanction].”) The Supreme Court noted
17 that the ***City did not question a court’s inherent authority to impose nonmonetary sanctions*** for
18 misconduct. *Id.* (“The existence of such inherent authority is not disputed here. The City contends,
19 however, that courts’ inherent authority is limited to nonmonetary sanctions.”) The Supreme Court in
20 *PwC* also reconfirmed its conclusion in *Cedars-Sinai Medical Center v. Superior Court* (1998) 18
21 Cal.4th 1 at page 12 that “intentional spoliation ‘would surely be a misuse of discovery within the
22 meaning’ of section 2023.010.” (*citing with approval* analysis of dissent of Justice Grimes in the
23 Court of Appeal below.) *PwC* at 71 & fn. 4.

24 In *City of Los Angeles v. Zamora* (1980) 28 Cal.3d 88, the Supreme Court considered whether
25 the City’s wholesale destruction of a category of documents affecting a class of litigants would allow
26 the City to claim it did not intend to harm the evidentiary needs of a particular litigant like Mr.
27 Zamora:

28 “About two weeks before defendant’s arrest in May of 1976, the Los Angeles City

1 Attorney's office directed the destruction of all past records through 1974 of citizen
2 complaints against police officers, excepting only complaints found meritorious by
3 police investigation. As we shall explain, ***we have determined that the destruction of***
4 ***unsustained citizen complaints was entirely improper, and that such destruction***
5 ***deprived defendant of the opportunity to locate witnesses who could testify that on***
6 ***past occasions the officers involved in his case had used excessive or unnecessary***
7 ***force.*** We therefore conclude that the trial court erred in failing to impose sanctions
8 upon the prosecution." *Id.* at 93, emphasis added.

9 "We reject also the last ground advanced by the prosecution: that the city did not
10 destroy the records with the express purpose of depriving this particular defendant of
11 useful evidence. ***Proof of a specific intent to deprive a particular defendant of***
12 ***evidence, as contrasted to an intent to deny evidence to a class of potential***
13 ***defendants, is not a prerequisite to imposition of sanctions.*** . . . We drew no
14 distinction in [the] Pitchess [case] between persons who had already been involved in
15 such altercations and those who might be involved in the future [and their right to
16 discover prior complaints against police officers]; we make no such distinction here;
17 the destruction of records involved in this case equally violates the discovery rights of
18 both classes of defendants. Redress of that violation requires the imposition of
19 appropriate sanctions by the trial court." *Id.* at 99, emphasis added.

20 In the case of spoliation of evidence, the sanctions must remedy the negative impact on the ability of
21 the moving party to prove elements of his or her case.

22 **IV. CITYWIDE INTENTIONAL DESTRUCTION OF CHAT CONVERSATIONS,**
23 **INCLUDING FOR THE YEARS COVERED BY THE PROJECT AND THE PRE-**
24 **PLUM PROCESS, REQUIRE SANCTION NOW, OR LIMITED EVIDENTIARY**
25 **HEARING AND THEN SANCTION.**

26 **a. Sanction Rulings Against Google's Configuration Of Its Own Chat**
27 **Demonstrate The Gravity Of The City's Even Worse Conduct.**

28 As the Second District Court of Appeal has observed in *Vasquez v. California Sch. of Culinary*
Arts, Inc. (2014) 230 Cal.App.4th 35, 42–43: "Because of the similarity of California and federal
discovery law, federal decisions have historically been considered persuasive absent contrary
California decisions." See also, *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218
Cal.App.4th 853, 862, fn. 6 (Dearth of California cases on ESI discovery warrants look to federal
cases for guidance.)

In re Google Playstore Antitrust Litigation (2023) 664 F.Supp. 3d 981 involved a sanctions
motion for spoliation of Google Chats (1-on-1 and group) by Google itself, *a situation nearly*
identical to this case. *Id.* at 981-82. There, Google purposely configured its internal Google Chats to
default to Chat History "OFF," but allowed its employees themselves to decide if they should turn

1 Chat History “ON” to preserve chats discussing antitrust related matters relevant to a litigation hold.
2 *Id.* at 982, 986-87 (“Google said that Google Chats are typically deleted after 24 hours, and that
3 Google had not suspended this auto-deletion even after this litigation began. Google chose instead to
4 let employees make their own personal choices about preserving chats”). When it became aware of
5 potential spoliation, the Court ordered Google to search its chats for instances where employees
6 sought to turn off history or go to “private chat,” and the Court ordered an evidentiary hearing with
7 key Google witnesses to explain how Google Chat worked to assess the extent to which Google
8 carried out its evidence preservation duties. *Id.* at 982 (“The parties disagreed about a number of
9 factual issues, and the Court was unwilling to resolve the disputes on a dry record. Consequently, the
10 Court held an evidentiary hearing over two days in January 2023.”) The Court concluded Google
11 violated those duties. *Id.* at 991-95. At trial, the Court imposed a permissive adverse inference
12 instruction. Hall Decl., **Exh. 24**, pp. 27-28. The jury, allowed to rely on the inference as part of the
13 evidence, found Google guilty of antitrust violations, and the Court turned down Google’s claim that
14 the issue/evidentiary sanction was unfair.⁴ *Id.*

15 But at least Google allowed its employees to turn Chat History “ON.” The City chose a course
16 of action far worse. It used the option on the Admin Console to turn Chat History completely “OFF”
17 with ***no option*** for City users to turn it “ON.” The gravity of this choice weighs heavy for sanction.

18
19 **b. The City's Intentional Violation of Retention Laws Favor Sanction.**

20 Google is a private corporation not subject to a duty to preserve its records unless a duty arises
21 based upon reasonably foreseeable litigation before being sued, or upon being sued. The City is also
22 subject to these duties of preservation, however, the City is also obligated to preserve records under

23
24 ⁴ Other federal courts have been severely critical of Google’s intentional deletion of chats. *United*
25 *States v. Google, LLC*, 2024 WL 3647498 (D.D.C. Aug. 5, 2024)(Leaving litigation hold
26 implementation in hands of employees is not condoned, but other evidence established the antitrust
27 violation without need for the court to invoke an evidence sanction.) Hall Decl., **Exh. 31**. Another
28 Court ordered Google’s CEO, despite the “apex rule” that normally isolates an entity’s highest
officials from deposition, to sit for a 4-hour deposition in part on the destruction of chats. *Texas v.*
Google, LLC (2024) 47 F.R.D. 490, 501 (“The States have raised legitimate concerns that, as a result
of its Google Chats retention policies, Google may not have retained relevant and discoverable
materials in this case.”)

1 state and local law as a public corporation. [Government Code section 34090\(d\)](#) mandates a two-year
2 preservation requirement for all records of a city. Hall Decl., **Exh. 25**.

3 The two-year minimum requirement is incorporated into the City’s comprehensive records
4 retention ordinance codified at LAAC §§ 12.1–12.7, specifically section § 12.3(b)(6) (“Records not
5 included in categories (1) through (5) or (7) and (8) of Subsection (b) shall be retained for a minimum
6 of two years. . . .”) Hall Decl., **Exh. 26**. The City Council and its attorneys participated in the 2017
7 motion and settlement agreement with the First Amendment Coalition where the City acknowledged
8 in the motion approving the settlement that records must be retained two years under [Government](#)
9 [Code section 34090](#), and § 12.3 of the City’s Administrative code. Hall Decl., **Exhs. 6 & 7**.

10 There is no serious argument that instant messaging chats and texts that contain
11 communications are records of the City required to be retained. See “record” and “writing” definitions
12 at [Government Code § 7920.530 & 7920.545](#) and LAAC § 2.1(j) See also, *City of San Jose v.*
13 *Superior Court* (2017) 2 Cal.5th 608, 618 & 625 (Recognizing emails, texts and other electronic
14 communications are used today to conduct public business and that “a city employee’s
15 communications related to the conduct of public business do not cease to be public records just
16 because they were sent or received using a personal account.”) The Supreme Court has held texts/
17 chats are public records. Such records by law must be retained.

18 One of the obvious purposes of record retention laws is to assure that such records are
19 available to fulfill the City’s duty to respond to records requests and to keep records of the conduct of
20 City business for a minimum period of time because it may be evidence required in criminal and civil
21 litigation, or as part of an internal investigation. In 2008, the City Attorney’s office released a
22 sophisticated analysis of the City’s obligations to retain electronic recordings of its security cameras.
23 Hall Decl., **Exh. 27**. The memo acknowledged the two-year minimum under [Section 34090](#). Id. It
24 discussed the importance of setting a minimum holding period of these electronic records so that
25 evidence is available to potential litigation claimants. Id. Currently, the City’s attorneys are refusing to
26 produce to CBSC copies of all advice memos they prepared in connection with operation of the City’s
27 Google Workspace. (Motion to Compel RFP, Set Two [Google Docs] set for March 27, 2025.)
28 Intentional violation of record retention laws weighs heavy as evidence of spoliation.

1 **c. The City’s Practices To Destroy All Chats And Refusals To Archive**
2 **Other Disappearing Chats Guaranteed A Deprivation Of Relevant**
3 **Admissible Evidence Across A Vast Class Of Foreseeable Litigants**
 Including CBSC.

4 On January 14, 2025, the City sent a memo to all of its Google users to turn on Chat History
5 and warn City officials/employees that: “Please note that these messages are also stored in the City’s
6 archive and are subject to production in legal proceedings, public records requests, and internal
7 investigations.” Hall Decl., **Exh. 14**. This statement is an admission that for every day before that, for
8 many years, *including the relevant time period for the administrative record in this case, and the*
9 *evidence period for the associated pattern and practice claims of the Petition/Complaint*, the City
10 knew it was destroying evidence “subject to production in legal proceedings.” Its memo
11 acknowledged to the world *what it had kept secret from litigants for years*.

12 Two days later, on January 16, 2025, CBSC sent an urgent litigation hold letter. Hall Decl.,
13 **Exh. 15**. CBSC was alarmed that Google Chats over the previous 30–60 days, including the time
14 leading up to and during the devastating Palisades fire might still reside on Google’s servers but just
15 not be visible in user accounts. Hall Decl., **Exhs. 15, 16, 17, 18 & 19**. The first hold demanded that
16 the City do two things based upon CBSC’s November 4, 2024 pre-litigation letter and subsequent
17 actions of the City: (1) immediately contact Google LLC to retain *citywide* any Google Chats that
18 could be saved from Google’s servers in order to comply with [Gov. Code, § 34090](#), and (2)
19 immediately implement a hold on the highest City offices to require archiving of business conducted
20 over non-Google text/chat applications. [Id.](#)

21 On January 24, 2025, the City responded in a cursory and dismissive letter. Hall Decl., **Exh.**
22 **16**. Significantly, the City did not say that all Google Chats for the 30–60 day period before receipt of
23 the hold letter were permanently destroyed, or that Google told the City they were in-fact destroyed.
24 [Id.](#) The City acknowledged the citywide nature of CBSC’s claims:

25 “The City disagrees with the unsupported and speculative claims in your January 16
26 Letter that the City is allegedly in violation of [Government Code § 34090\(d\)](#) or that the
27 City needs to take further action, including contacting Google LLC, to avoid
28 noncompliance. These allegations are without merit and any lawsuit asserting such
claims would be unfounded.” [Id.](#)

1 The City evaded the scope of the January 16 litigation hold letter by declaring it would only
2 implement a litigation hold on documents *related to the existing claims in this lawsuit*, and not on the
3 pattern and practice claims in CBSC’s November 4 letter:

4 “The City confirms its compliance with all document retention and litigation
5 preservation obligations under state law, including all requirements under the
6 Government Code and the California Discovery Act, ***as they may apply to Petitioner’s lawsuit.***” Id., emphasis added.

7 On January 27, 2025, CBSC sent a notice of deficient litigation hold and informed the City that based
8 upon its refusal to immediately implement a hold of any leftover Google Chats and halt citywide use
9 of non-Google text/chat applications without archiving, it would proceed to file its motion for leave to
10 amend to halt these violations. Hall Decl., **Exh. 17**. The warning led to two teleconferences on
11 January 31 and February 5, 2025. On February 5, 2025, the City’s attorneys sent an email in which a
12 crack appeared in the stonewalling of simple information about how the City’s Google Workspace
13 works: the City provided some information without requiring formal discovery as it has insisted
14 throughout this case. Hall Decl., **Exh. 18**. The attorneys reported that Google weirdly refused to state
15 whether or not it still possessed any City deleted chats. Id. However, the City absolutely persisted in
16 its refusal to implement a citywide litigation hold to prevent loss of evidence in all kinds of litigation.
17 Id. It again restricted the litigation hold *to only this case as currently pled*. Id. On February 12, 2025,
18 CBSC summarized the ongoing record retention violations and hold deficiencies. Hall Decl., **Exh. 19**.
19 On February 13, 2025, CBSC filed its motion for leave to amend to add these violations as a claim.
20 Now the City’s attorneys are admitting in the press that Mayor Karen Bass’s instant messages leading
21 up and during the Palisades fire are irretrievable, a result CBSC tried to stop. Hall Decl., **Exh. 20**.

22 The intentional destruction of records/evidence citywide for many years on the user accounts
23 of 26,000 officials and employees, and failing to cabin and archive non-Google text/chat
24 conversations of City officials and employees *exceeds the magnitude of destruction seen at the hands*
25 *of the City in People v. Zamora*. The City knew or had to know it would destroy Google Chats
26 involving all possible litigation which make the preservation duty arise at least April 2019 when the
27 Google Hangouts Admin Console was configured. Hall Decl., **Exh. 3**. It arose again when CBSC
28 exhausted administrative remedies under [Pub. Resources Code, § 21177](#) and City attorneys were

1 consulted on the issues. Hall Decl., **Exhs. 32, 33 & 34**. It arose again when the City was sued. First
2 Amended Petition (8/3/2023) & Hall Decl., **Exh. 35**.

3
4 **d. Sanctions Will Address The Wholesale Evidence Destruction.**

5 The City knew about its record preservation obligations and engaged in a multi-year strategy
6 to quietly delete chat messages without disclosing it and getting approval (as required in the First
7 Amendment Coalition settlement) from the City Council on the Records Disposition Schedule of the
8 Information Technology Agency (Hall Decl., **Exh. 8** [absence of Google Chat or non-Google text/chat
9 deletions on ITA Disposition schedule]), and without informing litigants like CBSC of the existence
10 of the potential evidence locations on the Google Workspace, or as destroyed by actions of the City
11 (Hall Decl., Exh. **28** [City's Preliminary Notification Letter - no ESI disclosure other than email]).

12 California case law requires the balancing of factors in determining the appropriate sanctions
13 to remedy the harm inflicted by the spoliation. Although *Zamora* was a criminal case, the Supreme
14 Court's analysis of case-based factors in deciding nonmonetary evidentiary sanction is instructive.
15 CBSC followed *Zamora* and *Victor Valley* to reach its recommended sanctions:

16 **1. Terminating Nor Monetary Sanctions Are Not Requested To Sanction The Spoliation.**

17 A terminating sanction is not requested based upon current facts because CBSC has access to some
18 evidence to try to prove its claims. However, with the exception of reimbursement for prosecution of
19 this motion, a monetary sanction would be insufficient because the City's intentional evidence
20 destruction must be presumed to have destroyed relevant and admissible evidence, and non-monetary
21 issue and evidence sanctions can be ordered by the Court to address this harm.

22 **2. Release Of All Non-Attorney Client Emails/Documents Is Requested.** Wholesale
23 evidence destruction here was intentional and malicious within the meaning of the *Zamora* case.
24 There, the Supreme Court concluded that such wholesale destruction was automatically prejudicial,
25 and allowed the evidentiary sanction of the Court of Appeal to stand. It must be presumed that City
26 officials discussed the Project and exchanged Local Councilmember positions using email and chats
27 interchangeably, because the City has admitting to doing so in other communication channels. To
28 partially remedy the destroyed chats, the Court should rebalance the City's official information

1 privilege claim from July 15, 2024 to withhold from CBSC significant evidence. Hall Decl., **Exhs. 34**
2 **& 35**. All deliberative process must be invalidated to provide CBSC the maximum evidence that
3 remains available. Deliberative process is not an absolute privilege. CBSC’s need for this evidence is
4 much greater in the balance of official information privilege due to the City’s malicious spoliation and
5 its long-time concealment from litigants including CBSC. Hall Decl., **Exh. 28**.

6 **3. Issue Presumptions and Evidentiary Prohibition Is Requested.** It must be presumed that
7 City officials (like they admit they did in other communication channels) also shared “comments and
8 positions” of the Local Councilmember in Google and non-Google text/chats that were destroyed. To
9 partially remedy these destroyed text/chats, the Court should impose issue and evidentiary sanctions.
10 The Court should try this case with an evidentiary presumption that City officials and employees used
11 all available communication channels to pass along the “comments or positions” of the Local
12 Councilmember. The Court should impose a sanction prohibiting the City from submitting any
13 deposition, declarations or argument that City officials do not use Google or non-Google text/chats to
14 communicate “comments or positions” of the Local Councilmember.

15 **4. Reimbursement of CBSC To Prosecute This Motion.** The Court has the authority to order
16 the City to reimburse CBSC for its reasonable cost to prosecute this motion (*PwC* at 59), which is
17 \$81,250. Hall Decl., ¶ 14.

18 **V. CONCLUSION.**

19
20 Petitioner CBSC respectfully requests the Court to impose sanctions. If the Court needs more
21 evidence, it should order a limited evidentiary hearing, ordering the City to produce key records and
22 producing PMKs to testify, and in the meantime suspend the City’s motion for protective order since
23 the RFAs and inquiry of the evidentiary hearing would overlap.

24
25
26 Dated: March 25, 2025
27 Channel Law Group, LLP
By: /s/ Jamie T. Hall
28 Attorneys for Petitioner

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed 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 8383 Wilshire Blvd., Suite 750, Beverly Hills, CA 90211.

On March 25, 2025, I served a copy of the foregoing documents described as **PETITIONER’S MOTION FOR SANCTIONS AND EVIDENTIARY HEARING ON SPOILIATION** as follows:

[X] BY E-MAIL: I transmitted true copies of the foregoing document to the persons identified below at the e-mail addresses identified below.

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

Executed on March 25, 2025 in Beverly Hills, California.

/s/ Hannah Simon

HANNAH SIMON

See Attached Service List

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View a Reservation

Reservation

Reservation ID:
972113921665

Reservation Type:
Motion for Sanctions

Case Number:
23STCP02375

Case Title:
CRANE BOULEVARD SAFETY COALITION, AN UNINCORPORATED ASSOCIATION vs CITY OF LOS ANGELES, A MUNICIPAL CORPORATION

Filing Party:
Crane Boulevard Safety Coalition (Petitioner)

Location:
Stanley Mosk Courthouse - Department 54

Date/Time:
June 6th 2025, 9:00AM

Status:
RESERVED

Number of Motions:
1

Motions

Motion for Sanctions

 Reschedule >

 Cancel >

Reservation History

Chat

Status Date	Status	Action
03/24/2025 4:48PM	Reserved by User Date: June 6th 2025, 9:00AM Location: Stanley Mosk Courthouse - Department 54 Motions: 1	\$ View Receipt

 [My Reservations](#)

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Channel Law Group, LLP

May 5, 2025

City Council File 24-1488

City Council Closed Session To Discuss Issues Raised In Litigation

Crane Boulevard Safety Coalition v. City of Los Angeles

(Case No. 23STCP02375)

EXHIBIT 2

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Electronically FILED by
Superior Court of California,
County of Los Angeles
4/18/2025 8:38 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

8 Attorneys for Petitioner,
9 CRANE BOULEVARD SAFETY COALITION

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 Case No. 23STCP02375

13 **PETITIONER'S NOTICE OF MOTION**
14 **AND MOTION TO COMPEL RE**
15 **PETITIONER'S REQUEST FOR**
16 **ADMISSIONS – SET THREE AND FORM**
17 **INTERROGATORY 17.1**

18 CRANE BOULEVARD SAFETY COALITION,
19 an unincorporated association,
20 *Petitioner,*

21 v.

22 CITY OF LOS ANGELES, a municipal
23 corporation,
24 *Respondent.*

25 RACHEL FOULLON; IAN COOPER; and
26 ROES 1-25
27 *Real Parties in Interest.*

Assigned for all purposes to:
Honorable Maurice A. Leiter
Department 54

Action Filed: July 7, 2023

Date: June 12, 2025
Time: 9:00 am

RESERVATION ID: 617794822839

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NOTICE OF MOTION

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 12, 2025, at 9:00 am, in Department 54 of this Court located at 111 N. Hill Street, Los Angeles, CA 90012, Petitioner Crane Boulevard Safety Coalition (“Petitioner” or “CBSC”) will, and hereby does, move the Court, pursuant to Public Resources Code sections 21167.4(c), 21167.6(e), Code of Civil Procedure sections 2033.290 and 2030.300 to compel further discovery of Petitioner's Request for Admissions, Set Three and corresponding Form Interrogatory No. 17.1 propounded on the City of Los Angeles.

Petitioner requests orders compelling Respondent City of Los Angeles (“City”) to further respond to the following fifty-seven (57) Requests for Admission, Set Three (“RFAs”) and related Form Interrogatory 17.1: Request Nos. 51, 54, 55, 56, 57, 58, 59, 62, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 102, 104, 106, 107, 108, 109, 110, 111, 119, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, all of which the City has refused to answer at all, on the general grounds that they are irrelevant to any claim in the petition/ complaint or needed to determine a motion for evidence spoliation based upon the City’s characterization of the factors in determining such a motion. Of these fifty-seven (57) RFAs, the City, in its Motion for Protective Order, only asserts any particular burden as to twelve RFAs: Request Nos. 62, 79, 80, 86, 87, 88, 89, 90, 91, 93, 123, 130, so CBSC segregates its Motion to Compel analysis based upon the same basis as the City.

1 The Motion will be based on this Notice, the accompanying Memorandum of Points and
2 Authorities, the Separate Statement, the Declaration of Jamie T. Hall, the argument of the parties, and
3 all other matters or evidence that may properly come before the Court.

4
5 Channel Law Group, LLP

6 Respectfully submitted,

7 Dated: April 18, 2025

8 By: /s/ Jamie T. Hall

9 Attorneys for Petitioner
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I. INTRODUCTION

By choosing to turn off Chat History for the Google Chat (1-on-1 and group) and prohibiting users from turning it on, ***the City guaranteed these chats would not be archived, even though the City was archiving all of its email.*** The City had to know or reasonably should have known that such settings would deny discovery and evidence access rights of a large class of future litigants. The City’s actions raised an issue of spoliation of evidence when its own written memos distributed to City users showed the City knew it created an “off-the-record” channel where the City’s business could be conducted yet evade disclosure in future litigation.

For CBSC, the lost chats from this off-the-record channel involved discussions about the Project in this case, administration of the local specific plan, or aspects of the pre-PLUM process impacting fundamental due process rights of land use appellants. Days after the written evidence of this chat destruction was produced to CBSC, the City moved the Court to continue the trial date but not the December discovery cutoff date. CBSC filed a Motion to Extend Discovery For Likely Motion

1 For Sanctions For Spoliation. The parties stipulated to an extension of discovery cutoff and, in good
2 faith reliance on that extension, CBSC took its Motion off calendar and proceeded with discovery.

3 As this case progressed, it became clear that the City *for years* has not disclosed the existence
4 of the Google Workspace, the routine use of Google Chats for City business communications, the
5 setting of the chat system to auto-delete at multiple decision points since inception, and that City
6 officials/employees are now using non-Google chat applications to create other off-the-record text/
7 chat channels that the City does not archive. In order to fully support a sanctions motion, and to seek
8 evidence about the pre-PLUM process, CBSC served a set of directly worded 99 RFAs, and a Hall
9 Declaration to establish good cause for extra RFAs.

10 The RFAs sought facts relevant to the series of intentional acts that put in place the auto-delete
11 of Google Chats, and kept that choice in place at each fork in the road. The RFAs sought facts about
12 who set the policy, if it was supported with legal advice, and if the Mayor and high officials used
13 these chats to conduct City business each time a new chat application came out. The RFAs also
14 probed high City official use of non-Google chat applications as another means of evading archiving
15 evidence for future litigants. Hand-in-hand with the acts of spoliation were acts taken to not disclose
16 the existence of Google Workspace/Google Chat use, or its deletion to litigants. The RFAs sought
17 facts on failures to disclose facts about the City's ESI systems and the auto-delete feature of Google
18 Chat to litigants over the years since initial rollout. Other RFAs sought facts about the pre-PLUM
19 process at issue in the case.

20 The City sent a letter objecting to two-thirds of the RFAs, saying they were not related to the
21 operative pleading, and that they were "not needed" to determine a sanctions motion. In meet and
22 confer, CBSC, in good faith withdrew six of the RFAs, but the City offered nothing. CBSC sent a
23 letter illustrating through examples how the City's objections were exaggerated. Then the City filed a
24 Motion for Protective Order asking that it not be required to answer 57 RFAs it did not want to
25 answer. After IDC, on March 18, 2025, the City submitted verified answers to only thirty-six RFAs,
26 but for the remaining fifty-seven RFAs it asked that it be relieved of answering.

27 The facts sought by the RFAs might be required by the Court to determine the pending CBSC
28 Motion for Sanctions or Evidentiary Hearing on Spoliation.

1 Throughout this litigation the City has refused to comply with meet and confer, and records
2 disclosure requirements of Rules of Court. It said it would speak only in response to formal discovery,
3 but when that was served, the City breached its duty to answer.

4 **II. RELEVANT FACTUAL SUMMARY**

5
6 Original discovery in this case focused on two areas: (1) discovery on the completeness of the
7 administrative record because documents were obviously missing, and (2) discovery about the pattern
8 and practices. Hall Decl., ¶ 3. The City tried to claim that discovery was prohibited in CEQA cases.
9 Id., **Exh. 8**, pp. 12–14. CBSC pointed out that was not supported in statute or in two Court of Appeal
10 cases that hold CEQA case discovery is used to complete the administrative record. Id. When CBSC
11 noticed the deposition of Roberto Mejia to gather evidence about the pre-PLUM process, the City’s
12 attorneys tried to claim that his deposition could not be taken because everything he could be asked
13 about was allegedly subject to attorney client or deliberative process privilege. Hall Decl., Id., **Exh. 9**,
14 pp. 4–5, 11.

15 CBSC subsequently took depositions of Roberto Mejia, Jane Choi, and Phyllis Nathanson
16 regarding the pattern and practices of the City related to pre-PLUM process, Specific Plan Floor Area
17 Ratio interpretation, and practices drafting City ordinances that reduced notice of decisions or rights
18 to appeal. Hall Decl., ¶ 4, **Exhs. 10, 11, 12**. The deposition of Helen Campbell probed documents
19 missing from the administrative record. Id., **Exh. 13**. In March & May 2024, the City Attorney’s
20 office summarized its search for use of personal emails by numerous records custodians (id., **Exhs. 14**
21 **& 20**), and the City’s attorneys offered that CBSC conduct up to 40 depositions of those records
22 custodians, an offer CBSC refused when it realized that City employees had no need to use their
23 personal email accounts to communicate about City business because they could use the City’s
24 Google Chat knowing that those communications would self-destruct in about 24 hours. Id.

25 However, when the Court asked if the City was deleting chats, City attorneys gave an evasive
26 answer, and upon learning that the PLUM Notes edited by Council Deputies had not yet been
27 expressly sought in discovery, the Court directed CBSC to pursue that inquiry to make a clear record,
28 and to investigate whether the City in fact was not retaining some of its Google Chat records. Hall

Decl., ¶ 5. After propounding records requests to obtain information regarding the City's use of Google Workspace, and its scope, and whether the City destroyed Google Chats, on September 30, 2024 the City first produced written evidence that it had purposely configured its Google Chats (1-on-1 and group) to not save Chat History and destroy chats about 24 hours after being read. Id., **Exh. 15**. These City memos confirmed that the City had been *systematically destroying all City chats for many years*, knowing that such actions *harmed the evidence rights of all classes of litigants*, included CBSC. Id. And over the 14 years CBSC's counsel has been practicing CEQA litigation within the City, he knew that he had never received a Preliminary Notification Letter under Los Angeles County Superior Court Rule 3.232(d) informing him of (1) the existence of the City's extensive Google Workspace, (2) routine use of Google Chats (1-on-1 and group) by public officials and employees, (3) the auto-delete configuration of Google Chats (1-on-1 and group), or (4) the City Attorney's Office's practices in implementing litigation holds on such Google Chats when the City was sued or received a formal litigation hold letter from a CEQA petitioner. Id.

The City's attorneys immediately moved this Court for an order continuing the trial date *but not the discovery cutoff*. Hall Decl., ¶ 6. On November 1, 2024, CBSC filed a Motion to Extend Discovery For Likely Motion To Sanction For Evidence Spoliation. Id., **Exh. 16**. The parties negotiated an extension of the discovery cut off to April 18, 2025, and the trial date/briefing schedule, filed as a stipulation and order on December 11, 2024. Id., **Exh. 17**. In reliance on this extension to conduct discovery for the expected motion for sanctions and pre-PLUM process, CBSC took off calendar its motion to extend the discovery cut off. Id.

CBSC'S RFAs - Set Three (Extent of City Acts to Obscure Google Workspace From Litigants, Destroy Chat Conversations, Pre-PLUM) and Form Interrogatory 17.1 were propounded on January 24, 2025 for the specific purpose of establishing facts relevant for the Court to determine whether the City ought to be sanctioned for its intentional acts to destroy Google Chats and obscuring it from litigants for years, and about the pre-PLUM process. Hall Decl., ¶ 7, **Exh. 1**. To avoid the City's tendency to object to all discovery using conjunctive and disjunctive connectors, the RFAs were

1 drafted to be as simple as possible, but of necessity there were 99 new RFAs required¹ to establish
2 facts for the upcoming motion for sanctions (2 for authentication). Id. The RFAs were organized by
3 topic areas moving from the time the City first made Google Workspace and its Google Chat
4 applications available to its 26,000-user base. Id. Legal advice was likely sought or provided to
5 inform policy decisions at the outset of installing these significant new records generating and storage
6 systems necessitating an inquiry to the beginning. Id. As each new chat application was made
7 available by Google, the City made objectively observable decisions to keep the Google Chat History
8 turned OFF, continued to maintain an off-the-record City Hall communication chat channel
9 unaccountable in litigation, and continued to not inform litigants, including CBSC. Id. CBSC also
10 served a Hall Declaration to set forth facts justifying the need for additional RFAs and 17.1 responses.
11 Id., **Exh. 2**.

12 On February 13, 2025, the City sent a letter objecting to the RFAs and 17.1. Hall Decl., ¶ 8,
13 **Exh. 3**. The parties met and conferred on February 19 & 28, 2025, and CBSC in good faith withdrew
14 six RFAs. Id. On February 19, 2025, CBSC sent a response letter demonstrating the lack of good
15 cause for the City to evade answering questions relevant for the determining the motion for sanctions.
16 Id., **Exh. 4**. On March 7, 2025, the City filed a Motion for Protective Order, and objections and
17 responses saying it would not provide any substantive responses until March 18, 2025. Id., **Exh. 5**. On
18 March 17, 2025, at IDC, the Court agreed motions would be necessary. Id. On March 18, 2025, the
19 City served responses not answering 57 of the RFAs. Id., **Exh. 6**. On April 17, 2025, at the end of
20 email efforts to meet and confer, CBSC asked the City to withdraw its Motion for Protective Order.
21 Id., **Exh. 7**. The City did not respond. Id.

22 **III. STANDARD OF REVIEW**

23
24 “Orders regarding discovery are reviewed under the abuse of discretion standard.” *Deck v.*
25 *Developers Investment Co., Inc.* (2023) 89 Cal. App. 5th 808, 823. “[T]he abuse of discretion standard

26 ¹ If the City’s attorneys complied with the ESI meet and confer requirements of [Cal. Rules of Court](#)
27 [3.724](#) and Local Rule 3.232(d) to disclose all locations of ESI records, including the existence of its
28 auto deletion of chats, most of these RFAs would have been answered in the meet and confer process.
But in the City, the strategy is to deny this duty and force formal discovery.

measures whether, in light of the evidence, the trial court’s decision ‘falls within the permissible range of options set by the legal criteria.’” *Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th 1076, 1089. An error of law by the trial court is also an abuse of discretion. *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311.

“There is little California case law regarding discovery of electronically stored information? We look, therefore, to federal case law on the discovery of electronically stored information under the Federal Rules of Civil Procedure for guidance on the subject.” [cites] [discussing federal case law on the spoliation of evidence]. “‘Because of the similarity of California and federal discovery law, federal decisions have historically been considered persuasive absent contrary California decisions.’” [cites]. *Victor Valley Union High School Dist. v. Superior Ct.* (2023) 91 Cal.App.5th 1121, 1143 (“*Victor Valley*” hereinafter)

IV. THE CITY’S REFUSAL TO ANSWER THE RFAs ARE WHOLLY WITHOUT SUBSTANTIAL JUSTIFICATION; AN ORDER TO COMPEL SHOULD ISSUE

CBSC’S RFAs - Set Three (Extent of City Acts to Obscure Google Workspace From Litigants, Destroy Chat Conversations, Pre-PLUM) seeks to obtain facts relevant to pre-PLUM and determine whether or not to sanction the City for malicious destruction of evidence foreseeably relevant to future litigation, and useful to litigants such as CBSC². The City’s refusal to answer these RFAs is not based upon any legitimate ground – the City merely seeks to evade accountability for its acts of

² To illustrate, the first RFA the City refuses to answer is: **Request No. 51: “Admit, that by installing the GOOGLE WORKSPACE suite of work collaboration applications for use of the CITY’s USER BASE, the CITY intended that such users would conduct the CITY’s business using GOOGLE WORKSPACE applications.”** CBSC expects that the City will take a page out of Google’s playbook in the recent case of *In Re Google Play Store Antitrust Litigation* (2023) 664 F.Supp.3d 981. In that case, Google tried to claim that its own Google Chat (1-on-1 and group) application was just an employee social space, and not a place for communicating corporate business that had to be preserved. *Id.* at 986. The Court rejected Google’s claim. *Id.* (“Google has generally pressed the suggestion in its briefs that Chat was primarily a social outlet akin to an electronic break room. . . . The record demonstrates otherwise. An abundance of evidence establishes that Google employees routinely used Chat to discuss substantive business topics. . . .”) The City does not want to admit that any of the Google Workspace applications, especially Google Chat (1-on-1 and group) that it configured to delete, were used for conducting mostly City business. That would foreclose an argument that such chats were fleeting, non-substantive discussions. The City must answer Request No. 51.

1 **wholesale evidence destruction** by avoiding admitting to facts that **it knows would increase the**
2 **likelihood the Court would have a factual basis to sanction**. The City's lack of cooperation is
3 predictable given the seriousness of sanctions.

4
5 **a. The City's Evasion Of The RFAs Is Continuation Of A Breach Of Duties**
6 **To Meet And Confer On ESI Issues And Disclose Spoliation To The**
7 **Court.**

8 "Counsel has an affirmative duty to be informed about a client's ESI and computer systems, in
9 order to assist the client in responding to both formal discovery **and informal requests for**
10 **information from opposing counsel and the court.**" 1 Cal. Deposition and Discovery Practice,
11 § 2A.03 (emphasis added). [Cal. Rules of Court 3.724](#), "Duty to Meet and Confer," sets forth City
12 duties on ESI issues: "(8) Any issues relating to the discovery of electronically stored information,
13 including: (A) Issues relating to the preservation of discoverable electronically stored information; (B)
14 The form or forms in which information will be produced; (C) The time within which the information
15 will be produced; (D) The scope of discovery of the information" This Rule applies to the pattern
16 and practice cause of action.

17 Moreover, Los Angeles County Superior Court Rule 3.232(d), has a CEQA-specific rule
18 relevant to the two CEQA mandamus causes of action, requiring the public agency to send a
19 Preliminary Notification Letter to counsel for a petitioner identifying the location of records that
20 might be includable in the administrative record. Indeed, twice at the outset of this case, the Court
21 ordered the parties to meet and confer about the administrative record and discovery (Hall Decl., ¶ 9,
22 **Exh. 18**), yet the City made no significant ESI disclosures to CBSC. As to ESI in the CEQA/land use
23 litigation context, to the best of the knowledge of CBSC's counsel, the City historically has only
24 notified opposing litigants of its willingness to search for and disclose emails and personal phone
25 texts, **not chat**. Id., **Exh. 19**.

26 Ethical obligations of legal counsel to an alleged spoliating client and their litigation
27 opponents have been used by the federal courts as a measure of conduct related to preservation of
28 evidence and duties to disclose information about the ESI systems: California Rules of Professional
Conduct 3.4 is particularly relevant:

1 “A lawyer shall not:

- 2 a. unlawfully obstruct another party’s access to evidence, including a witness, or
3 unlawfully alter, destroy or conceal a document or other material having
4 potential evidentiary value. A lawyer shall not counsel or assist another person*
5 to do any such act;
- 6 b. suppress any evidence that the lawyer or the lawyer’s client has a legal
7 obligation to reveal or to produce”

8 In *DR Distribs., LLC v. 21 Century Smoking, Inc.* (2021) 513 F.Supp.3d 839, 905–907, the federal
9 court reviewed attorney ethical obligations substantially the same as California’s Rule 3.4 finding
10 failures of former defense counsel to comply with those obligations to impair his credibility at the
11 court’s evidentiary hearing on spoliation: “A failure to comply with ethical obligations to opposing
12 counsel and the Court does not further a witness’ credibility.” *Id.* at 907.

13 Beginning in 2010, the City installed the Google Workspace and archiving/e-Discovery
14 system for its 26,000 users. But its attorneys, at least in the context of CEQA/land use civil litigation,
15 may have pursued a practice of not informing litigants of the existence of this system, how it worked,
16 and where relevant ESI documents could be found for inclusion in the administrative record. It is not
17 as if the City’s attorneys were unaware of the features of Google Workspace. The City Attorney’s
18 Office is one of the organizational units of the City served by Google Workspace. Hall Decl., **Exh. 22**.
19 In fact, Mr. Mejia testified that he used Google Chat with Mr. Blau as he arrived at the office on the
20 day he was deposed. Hall Decl., **Exh. 10**, p. 33. It is highly likely that the City’s attorneys handling
21 Preliminary Notification Letters under Local Rule 3.232(d) themselves, not only knew of the
22 existence of the City’s Google Chats disappearing from their own Gmail accounts within 24 hours,
23 but for up to 14 years may have participated in an institutional litigation strategy to not disclose key
24 information in those initial litigation letters.

25 When the City’s employees confirmed in depositions that they routinely used Google Chat at
26 work, CBSC’s counsel asked the City’s attorneys to provide copies of the contracts that governed the
27 installation of Google Workspace and the services the City obtained for this vast ESI creation and
28 archiving system. Hall Decl., ¶ 10. The City’s attorneys refused to disclose this information, declaring
it to be “irrelevant.” *Id.*, **Exh. 20**. CBSC asked the City to disclose how its Google Workspace system
works and the ways that it might be practically searched. *Id.* The City’s attorneys refused, insisting

1 that they would only speak through formal discovery. Id. Yet when formal discovery was propounded,
2 there has been significant evasion and obstructive conduct that defeated CBSC's ability to locate
3 responsive documents. Id. Thus, the City is before this Court again with unclean hands.

4 Now, confronted with simple, straight forward requests to admit facts about the pre-PLUM
5 process, Google Workspace, Google Chats, non-Google Chats, policy making and legal advice about
6 this system, and whether the highest officials of the City used the disappearing chat system each time
7 a new version rolled out, the City and its attorneys refuse to answer, and seek a protective order. The
8 City has no credibility in breaching its meet and confer disclosure obligations summarized above,
9 refusing to provide ESI system information except through formal discovery, and then, when such
10 discovery is served, refusing to answer the RFAs about how long the City has (1) obscured Google
11 Workspace from litigants and (2) destroyed chat conversations. An order compelling proper responses
12 to this critical history is essential.

13 **b. The RFAs Are Relevant To A Significant Pre-Trial Motion In This Case.**
14

15 The City seeks a protective order under [CCP § 2030.090](#) & [CCP § 2033.080](#), but the City's
16 argument ignores that [CCP § 2017.010](#) authorizes discovery in support of a motion in a case:

17 "Unless otherwise limited by order of the court in accordance with this title, any party
18 ***may obtain discovery regarding any matter***, not privileged, ***that is relevant to*** the
19 subject matter involved in the pending action or to ***the determination of any motion***
20 ***made in that action***, if the matter either is itself admissible in evidence or appears
21 reasonably calculated to lead to the discovery of admissible evidence. . . . ***Discovery***
may be obtained . . . of the existence, description, nature, custody, condition, and
location of any document, electronically stored information, tangible thing, or land or
other property." (Emphasis added.)

22 The City's argument that the RFAs seek information not relevant ***to the merits of the causes of action***
23 is wholly without substantial justification as an objection to the discovery of ***facts relevant to***
24 ***determine a motion***. The City knows full well that the RFAs were propounded for the purpose of
25 investigating the facts about the pre-PLUM process which is in the operative pleading, and in support
26 of a motion for sanctions. The discovery cutoff and trial schedule were extended ***specifically to allow***
27 ***this discovery to proceed*** – a fact the City omits from its February 13, 2025 meet and confer letter.
28 Hall Decl., **Exh. 3**. Instead, in its meet and confer letter and filed Motion for Protective Order, the

City makes an argument foreclosed by the Legislature in enacting [CCP Section 2017.010](#) *to permit discovery of facts relevant to determine any motion* filed in the case, even if such facts do not go directly to the merits of the causes of action. The City’s arguments directly contradict the Discovery statute.

c. The RFAs Seek Facts Relevant To Determine The Pending Motion For Sanctions And Evidentiary Hearing On Spoliation.

The RFAs are highly relevant to establish facts that the Court might need to consider regarding the evidentiary and issue sanctions requested in CBSC’s motion for sanctions.³ First, in meet and confer, the City claimed that some of the RFAs’ focus on the City’s settlement with the First Amendment Coalition (RFA Nos. 120–122) is not needed for the sanctions motion. The City is incorrect. The violation of a state statute and the City’s own records retention ordinance, particularly

³ As set forth in CBSC’s Motion for Sanctions, there is already substantial evidence that the City intentionally configured its Admin Console to destroy Google Chats (1-on-1 and group) within 24 hours, and that it knew or reasonably should have known that such evidence destruction would harm the discovery rights of the entire class of litigation opponents it would face going forward, including CBSC. The Court might reasonably conclude such acts were malicious toward litigants the City knew would be deprived of potentially relevant evidence. The Court may also find malicious intent from the City’s apparent consistent failure to disclose to opposing counsel or courts, including in this case, the existence of its Google Workspace or its auto deletion of Google Chats. This was comparable to [People v. Zamora \(1980\) 28 Cal.3d 88, 93 & 98](#), where the Supreme Court declared as “entirely improper” the Los Angeles City Attorney’s Office’s “wholesale destruction” of citizen complaints against police officers, and a conclusion that imposition of sanctions by the trial court was absolutely required. The Supreme Court concluded that such **wholesale evidence destruction was malicious by definition**. Id. at 98.

On the other hand, this Court may need more evidence of the City’s intent and maliciousness than what was available when CBSC filed its motion. The RFAs seek facts about how the City, for 14 years took affirmative actions to assure at least some litigants and courts were not informed about Google Workspace or the Google Chat auto delete configuration, and **that at multiple decision points from the initial set up and each fork in the road**, the City chose to keep for itself a non-public communication channel where no litigant could obtain this evidence. **The longer these actions occurred over numerous decision points, the stronger the evidence that the Court will have before it that the City’s actions were intentional and malicious.**

But because of the City’s evasion of the RFAs (CBSC had no choice but to file its motion for sanctions now **while waiting for the RFAs the City delayed by refusing to answer**) CBSC included in its motion for sanctions options for the Court to consider: (1) sanction based upon existing evidence, or (2) conduct a limited evidentiary hearing to cut through the delays of the case occasioned by the City’s refusals to answer the RFAs. The Court could also require the City to answer all the RFAs completely, without further evasion, and then decide the motion.

1 while simultaneously entering a settlement agreement with the First Amendment Coalition where the
2 City admitted a duty to save all records at least two years, would be evidence of a failure to preserve
3 evidence for “reasonably foreseeable litigation,” if the destruction was intentional. *Victor Valley*
4 *Union High School Dist. v. Superior Ct.* (2023) 91 Cal.App.5th 1121, 1149–53 (Although negligent
5 deletion of security video did not warrant the trial court’s severe sanction in this case, the Court
6 acknowledged that under federal and state cases violation of a records retention duty would be subject
7 to an evidentiary sanction if the destruction was intentional). Thus, the City is wrong that RFAs
8 focused on records retention laws and the history of intentional City’s configuration of its Google
9 Chats to delete are not relevant to the motion for sanctions. They are essential because the evidence
10 will show that the City was destroying chats ***at the same time it acknowledged its two-year duty in***
11 ***the settlement.***

12 Second, in meet and confer, the City incorrectly claimed there are only two issues in spoliation
13 cases: (1) whether a party had a duty to preserve evidence, and (2) whether the duty was violated. Hall
14 Decl., **Exh. 3**. The City oversimplifies and ignores *Victor Valley*’s discussion of intentional violation
15 of records retention laws at pages 1149–1152:

16 “under both federal and California law ***an adverse evidentiary presumption, as a***
17 ***sanction for failure to comply with a statutory or regulatory duty to preserve***
18 ***evidence, is only appropriate if the trier of fact concludes the evidence was***
19 ***intentionally destroyed.*** (Fed. Rules Civ. Proc., rule 37(e)(2)(A), (B), 28 U.S.C.
20 [inference permissible if court finds “the party acted with the intent to deprive another
21 party of the information’s use in the litigation.”]; [Evid. Code, § 413](#) [trier of fact may
draw adverse evidentiary presumption from a party’s “willful suppression of
evidence”]; CACI No. 20417 [“You may consider whether one party intentionally
concealed or destroyed evidence. If you decide that a party did so, you may decide that
the evidence would have been unfavorable to that party.”]” (Emphasis added.)

22 *Victor Valley* also identifies whether the non-spoliator was in the class of litigants protected by a
23 records retention law, regulation, or policy, but did not have to examine that issue in detail because in
24 that case the district’s erasure of a video was negligent, not intentional. In this case, there is evidence
25 of the City’s intent to destroy chats in order to maintain a non-public chat communication system, and
26 the City acknowledged on January 14, 2025 when it turned Google Chat History “ON” that such
27 evidence was relevant for legal proceedings, public records requests and internal City investigations.
28 Hall Decl., **Exh. 21**. Future litigants are among those for which the City is now saving Google Chat

1 records, which acknowledges it was a duty owed to future litigants before January 14, 2025 too.

2 The City's cramped reading of *Victor Valley* and ignoring the maliciousness inferred when
3 "wholesale record destruction" occurs as outlined in *People v. Zamora, supra* at footnote 3, seeks to
4 ***avoid being forced to concede to this Court that intentional acts of destruction and malicious intent***
5 ***are also factors***. The RFAs are focused on those factors, and the City's misstatement of the case law
6 factors is not a legitimate basis to excuse answering those RFAs.

7 **d. The Hall Declaration Meets The Minimal Requirements Of Sections**
8 **2033.040 and 2033.050 For Additional RFAs and Form ROGs.**

9 In attacking the Hall Declaration (Hall Decl., **Exh. 2**), the City recycles its flawed argument
10 that the information sought in the RFAs are not relevant to the "operative pleading" and "not needed"
11 to determine a motion for sanctions on spoliation. Hall Decl., **Exh. 3**. CCP § 2017.010 authorizes
12 discovery related to **any motion**. The Hall Declaration directly ***addresses the good cause for***
13 ***additional RFAs and Form ROG 17.1 to gather evidence related to the motion for sanctions and***
14 ***pre-PLUM process***. Intentional violation of state or the City's own records retention laws is also a
15 relevant factor as set forth above.

16 The Hall Declaration took pains to justify 97 additional RFAs. And the Court can see that the
17 RFAs, attached at Hall Decl., **Exh. 1**, are crafted to elicit a logical progression of facts laser focused
18 on the City's intentional and malicious evidence destruction or pre-PLUM issues.

19 One of the final sentences of the Hall Declaration best sums up this situation:

20 "Petitioner CBSC is also open to a stipulation of evidence in lieu of some of this
21 formal discovery if the City would cooperate. But the City, so far, demanded that
22 Petitioner seek information only through the formal discovery process ***so it cannot be***
23 ***heard to complain about a set of thorough requests for admission needed to get to***
the bottom of issues of grave consequence to the administration of justice in the City
of Los Angeles." Hall Decl., **Exh. 2**, ¶ 28, emphasis added.

24 **e. The City Offered No Burden Claims In Its Motion For Protective Order**
25 **As To RFAs 51, 54, 55, 56, 57, 58, 59, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74,**
26 **75, 76, 77, 78, 81, 82, 83, 84, 85, 92, 94, 102, 104, 106, 107, 108, 109, 110,**
111, 119, 120, 121, 122, 124, 125, 127, 128, 129, and Associated FROG
17.1.

27 The City offered no argument in its Motion for Protective Order that answering the listed 45
28 RFAs in this section are overly burdensome or oppressive. For these 45 RFAs, the City ***only relied on***

1 **its two flawed arguments** made above. But a spoliation motion requires a Court to consider **all the**
2 **facts** surrounding how the evidence was destroyed, the impact of the spoliated evidence on the non-
3 spoliating party's case, including what evidentiary, issue, monetary or terminating sanctions are
4 required to remedy the unjustified loss of evidence.

5 This Court should look to CBSC's pending motion for sanctions to see the already significant
6 evidence of spoliation **over many years**,⁴ but ask itself if it has a full record to assure a correct
7 decision in accordance with the subtle balancing of factors required by state and federal spoliation
8 decisions. If the City is going to be found to have breached evidence preservation duties, the City
9 itself is owed development of a full evidentiary record, as most Courts have ordered when faced with
10 serious evidence destruction. See, e.g., *In Re Google Play Store Antitrust Litigation* (2023) 664
11 F.Supp.3d 981, 982 (Calif. Federal Court ordered evidentiary hearing on Google's own auto-deletion
12 of employee Google Chats); *DR Distributions, LLC v. 21 Century Smoking, Inc.* (2021) 513 F.Supp.3d
13 839, 862–63 (Evidentiary hearing).

14 The City attorneys' refusals to informally disclose the characteristics of the City's Google
15 Workspace, including its chat settings, and including the use of non-Google chat applications like
16 Slack or Signal, violates [California Court Rules 3.724](#) meet and confer obligations for pattern and
17 practice ESI in this case. The City attorneys' demand that the City only disclose this information
18 through formal discovery, where they then interpose meritless objections and write evasive answers is
19 harassing, and time/resource wasting to CBSC and the Court. It also violates Los Angeles Superior
20 Court Rule 3.232(d) where this Court requires public agencies sued in writ under CEQA to disclose
21 the location of all records includable in the administrative record, which includes ESI. The City

22 ⁴ When Google Hangouts Chat came out (Hall Decl., **Exh. 22**), and when it was replaced with
23 Google Chat (Hall Decl., **Exh. 23**), the City turned "OFF" Chat History and prohibited any user from
24 turning it on. During these transitions, the City sent memos to City users assuring them that Google
25 Chat (1-on-1 and group) conversations were "off-the-record" before, and would continue to be so.
26 Hall Decl., **Exh. 15**. The City selected **the most extreme configuration** for these chats and assured
27 Los Angeles public officials and employees that they had a taxpayer-financed-evidence-destruction
28 machine at their disposal to "privately" conduct the City's public business. Just as the Supreme Court
condemned the Los Angeles City Attorney's office actions for **wholesale evidence destruction** in
Zamora (fn.3, *supra*), auto deletion of chats here is "entirely improper" for a public agency subject to
state and its own evidence preservation laws, especially where there is already some evidence, as
there is here, that the City concealed its practices.

1 simply does not want to answer these 45 RFAs because they are focused on facts for the sanctions
2 motion. The City must be compelled to answer the RFAs and 17.1 so the Court may consider this
3 evidence to determine spoliation.

4
5 **f. Given The Gravity Of The Issues, The City Does Not Show Undue**
6 **Burden To Answer The RFAs and FROG 17.1 For Nos. 62, 79, 80, 86,**
7 **87, 88, 89, 90, 91, 93, 123, 130; These Critical RFAs Must Be Answered.**

8
9 In its Motion for Protective Order, the City only raises burden claims as to 12 RFAs.

10
11 **“62. Admit that the majority (50% plus one or more) of CHAT**
12 **CONVERSATIONS of the CITY’s USER BASE contain discussions of CITY**
13 **business.”**

14 This RFA asks the City to admit that the predominant use of the chat conversations, including those in
15 chat rooms/spaces is City business oriented. See fn. 1, *supra*. This RFA does not require examination
16 of mass chat conversations. It may be answered by Information Technology Agency employees most
17 familiar with the City’s business purposes of chats.

18
19 **“79. Admit that between January 1, 2010 (approximately when the CITY began**
20 **transitioning to Gmail and GOOGLE WORKSPACE collaboration applications)**
21 **and the date of your response, CITY officials sought and obtained one or more**
22 **written reports or advice memos from the City Attorney’s office related to the**
23 **destruction of any of the CITY’s GOOGLE WORKSPACE DOCUMENTS,**
24 **including any CHAT CONVERSATIONS.**

25
26 **80. Admit that between January 1, 2010 (approximately when the CITY began**
27 **transitioning to Gmail and GOOGLE WORKSPACE collaboration applications)**
28 **and the date of your response, CITY officials sought and obtained one or more**
written reports or advice memos from the City Attorney’s office related to any of
the policies the Information Technology Oversight Committee considered to
govern GOOGLE WORKSPACE DOCUMENTS.”

These two RFAs are critical. They ask the City to admit that City officials sought and obtained legal
advice before configuring the Admin Console to destroy Google Chats or before adopting information
technology policies that govern evidence retention. Seeking legal advice *demonstrates knowing and*
intentional conduct, regardless of the advice given.

RFA Nos. 86–93 Mayors/Officials Using Google Hangouts/Chats For Business

1 This series of RFAs asks the City to admit that at each transition to new chat services, the Mayor and
2 high officials at that time used the off-the-record chat channel to initiate or receive City business
3 discussions. CBSC's February 19, 2025 letter (Hall Decl., **Exh. 4**), after a 20-minute internet search,
4 identified three former Garcetti aides still working for Mayor Bass who would *have percipient*
5 *knowledge of their own chats* with Mayors Garcetti and Bass. The City exaggerates the burden
6 because it does not want to admit high officials used chats *for City business purposes*. See discussion
7 at fn. 1, *supra*, regarding Google's claim chat is social.

8 **"123. Admit that from the date the CITY made GOOGLE WORKSPACE**
9 **available for use by its USER BASE until your response to this request, the City**
10 **Attorney's office has never included in any preliminary notification letter**
11 **required by Los Angeles Superior Court Local Rule 3.232(d) notice to opposing**
12 **counsel of the existence of DOCUMENTS created and stored in the CITY's**
13 **GOOGLE WORKSPACE as a location of documents includable in the**
14 **administrative record for the case.**

15 **130. Admit that, during the period of January 1, 2020 through December 31,**
16 **2024, when the CITY received any written request to implement a litigation hold**
17 **to preserve evidence that would encompass use of GOOGLE CHAT (1-ON-1 OR**
18 **GROUP), the CITY did not notify any opposing counsel of its ongoing practice of**
19 **allowing such GOOGLE CHAT (1-ON-1 OR GROUP) CHAT**
20 **CONVERSATIONS to be deleted from the user's account within 24 hours."**

21 These RFAs probe just two examples of the City's attorneys possibly failing to disclose the existence
22 of Google Workspace documents and concealing the auto-deletion of Google Chat from opposing
23 counsel. There are deputy City Attorneys or staff who can answer these RFAs off the tops of their
24 head. The City Attorney organizes its documents on networked hard drives easily searched
25 electronically. Also, Google's E-Discovery application enables the City to easily track litigation holds
26 on its system. *It is why the City bought the system – to make it easy to track all litigation holds*. The
27 City does not want to admit it has concealed ESI practices.

28 **V. CONCLUSION.**

The Court should order full and complete *non-evasive answers* to the discovery.

Dated: April 18, 2025

By: /s/ Jamie T. Hall

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed 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 8383 Wilshire Blvd., Suite 750, Beverly Hills, CA 90211.

On April 18, 2025, I served a copy of the within document described as **PETITIONER'S NOTICE OF MOTION AND MOTION TO COMPEL RE PETITIONER'S REQUEST FOR ADMISSIONS – SET THREE AND FORM 17.1** as follows:

[X] BY E-MAIL: I transmitted true copies of the foregoing document to the persons identified below at the e-mail addresses identified below.

Hydee Feldstein-Soto, City Attorney	Sabrina V. Teller, Esq.
Liliana Rodriguez, Deputy City Attorney	Veronika Morrison, Esq.
Marvin Bonilla, Deputy City Attorney	REMY MOOSE MANLEY LLP
Steven N. Blau, Deputy City Attorney	555 Capitol Mall, Suite 800
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Attorneys for Real Parties in Interest Rachel Foullon and Ian Cooper

Executed on April 18, 2025, in Beverly Hills, California.

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

/s/ Hannah Simon
HANNAH SIMON



Make a Reservation

CRANE BOULEVARD SAFETY COALITION, AN UNINCORPORATED ASSOCIATION vs CITY OF LOS ANGELES, A MUNICIPAL CORPORATION

Case Number: 23STCP02375 Case Type: Civil Unlimited Category: Other Writ /Judicial Review

Date Filed: 2023-07-07 Location: Stanley Mosk Courthouse - Department 54

Reservation

Case Name:

CRANE BOULEVARD SAFETY COALITION, AN
UNINCORPORATED ASSOCIATION vs CITY OF LOS
ANGELES, A MUNICIPAL CORPORATION

Case Number:

23STCP02375

Type:

Motion to Compel Further Discovery Responses

Status:

RESERVED

Filing Party:

Crane Boulevard Safety Coalition (Petitioner)

Location:

Stanley Mosk Courthouse - Department 54

Date/Time:

06/12/2025 9:00 AM

Number of Motions:

1

Reservation ID:

617794822839

Confirmation Code:

CR-NSAEYVMB7ZCUH4PQX

Fees

Description	Fee	Qty	Amount
Motion to Compel Further Discovery Responses	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

Payment Date:

n/a

[Print Receipt](#)

[+ Reserve Another Hearing](#)

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Channel Law Group, LLP

May 5, 2025

City Council File 24-1488

City Council Closed Session To Discuss Issues Raised In Litigation

Crane Boulevard Safety Coalition v. City of Los Angeles

(Case No. 23STCP02375)

EXHIBIT 3

‘Built to burn.’ L.A. let hillside homes multiply without learning from past mistakes



Homes lie in ruins on Somera Road in Bel-Air in February 1962, three months after the Bel-Air fire destroyed 484 homes.
(Frank Brown / Los Angeles Times)

By [Jenny Jarvie](#) National Correspondent

Feb. 9, 2025 3 AM PT

On a hot, dry November morning in 1961, flames from a trash pile on brushland north of Mulholland Drive were picked up by Santa Ana winds and swept across the canyons of one of Los Angeles’ wealthiest enclaves.

The apocalyptic scenes that played out — of [Hollywood celebrities](#) fleeing and clambering onto their roofs — captured the world’s attention like no urban conflagration in history. Actor Kim Novak and Richard Nixon, then a former vice president who moved to L.A. to practice law, wielded garden hoses to soak their wooden roof shingles. Actor Fred MacMurray enlisted studio workers from the set of “My Three Sons” to evacuate his family and help firefighters cut down brush around his Brentwood home.

When the blaze reached the mansions of Bel-Air, thermal heat lifted burning shingles high into the air and 50-mph winds hurled them more than a mile over to Brentwood. By nightfall, [the Bel-Air fire](#) had destroyed 484 homes, including those of actor Burt Lancaster, comedian Joe E. Brown and Nobel laureate chemist Willard Libby.

After firefighters extinguished the flames, socialite and actor Zsa Zsa Gabor, wearing white kitten heels and a string of pearls as she clutched a shovel, dug through the rubble of her Bellagio Place home for a safe with jewels.

The Bel-Air fire became known as the “the big one,” the event that forced everyone in Los Angeles to reckon with the dangers fire posed to their coveted hillsides.

In response, L.A. officials ushered in new fire safety measures, investing in more firefighting helicopters, new fire stations and a new reservoir. They also outlawed untreated wood shingles in high-fire-risk areas and initiated a brush clearance program to create defensible space around homes.

But they did not stop building on fire-prone ridges and canyons.

And there was no major push to radically rethink how they built. Over the next half a century, new housing tracts filled the wildland interface. And a succession of larger and more deadly fires swept through the region. But all the safety improvements prompted by the Bel-Air and subsequent fires could not outpace the escalating threat from new development and [climate change](#).

The massive blazes that engulfed Los Angeles hillsides communities Jan. 7, destroying 16,000 structures and killing at least 29 people in and around Pacific Palisades and Altadena, have prompted a new reckoning on how so

<https://www.latimes.com/california/story/2025-02-09/built-to-burn-a-history-of-development-of-los-angeles-hillsides>

many L.A. homes came to be built on land so vulnerable to fire and how, or whether, they should be rebuilt.

It's a crossroads the region has found itself at before when the power of fire left us reeling.

“California is built to burn — it’s not unique in that — but it’s built to burn on a large scale and explosively at times,” said Stephen Pyne, a fire historian and professor emeritus at Arizona State University.

“You can live in that landscape, but how you choose to live will affect whether that fire is something that just passes through like a big thunderstorm, or whether it is something that destroys whatever you’ve got.”

::

The story of how Los Angeles developed itself for disaster began with careless building on hillsides more than a century ago.

As the emerging metropolis began to overtake San Francisco as the most populated city in the West, shrewd real estate developers began to cast their eyes up to the foothills of the Santa Monica and San Gabriel mountains.

“The future of Los Angeles is in the hills,” proclaimed a 1923 [ad](#) for a new subdivision that showed renderings of Spanish Revival-style homes looming over steep hillsides and bluffs. “Hollywoodland will soon be a tract of beautiful homes with magnificent views.”

Lots cost as little as \$2,000 — the equivalent of about \$36,000 today.

The 1920s were a boom time for L.A., an era of heady confidence in humans’ ability to reshape the natural environment. The 1913 construction of the [Los Angeles Aqueduct](#), a bold engineering feat that transported water more than 230 miles to the semiarid region, paved the way for more than 100,000 people to move into the city each year. As the automobile allowed a burgeoning new middle class to live farther from downtown, the hills no longer looked so remote.

Hollywoodland may have been the most cannily marketed hillside subdivision: Its developers — including Harry Chandler, then publisher of the Los Angeles Times — erected a 45-foot-tall sign on Mt. Lee and invited reporters to [chronicle](#) the blasting of granite with dynamite and the cutting of roads with steam shovels.



A group of men, presumably builders and surveyors, poses near a sign advertising a new housing development known as Hollywoodland, circa 1925. The sign, since shortened, is now iconic. (Michael Ochs Archives / Getty Images)

But all over the mountains surrounding L.A., developers were buying up ranchland, filing plat maps and producing lavish real estate [ads](#) and [sales brochures](#) touting the foothills as an elevated paradise for a newly emerging upper middle class.

[Bel-Air](#) marketed itself as “the Exclusive Residential Park of the West” — so exclusive its owner refused to sell to members of the motion picture industry. Beverly Wood touted itself as “the Switzerland of Los Angeles.” [Pacific Palisades](#), founded by Methodists, was a “Christian community” with modern amenities “where the mountains met the coast.” In Altadena, a railroad hub in the shadows of the San Gabriel Mountains, [Altadena Woodlands offered](#) “a garden spot” and “panorama of wondrous beauty.”

In all the marketing hype, there was no mention of the risk of fire and landslides.

“It was a period of almost zero environmental consciousness,” said Philip Ethington, a professor of history, political science and spatial sciences at USC. “They had a poor understanding of the long, long history of fires, and the long ecological necessity of them. The developers didn’t want to dwell on the hazards. They saw fires as freak events.”



A Bel-Air house is engulfed in flame in November 1961.

(Los Angeles Times)

L.A.'s sloping suburbs came to embody not just the city's ambition but its folly.

Many hillside homes were built with combustible [wood shingle roofs](#). They were crowded together, next to flammable brushland, and accessed by narrow, winding roads that struggled to accommodate two-way traffic or firetrucks. Some communities had only one way in and out.

“To be in the hills, to be outside the madding crowd, this is part of the DNA of this region,” said Zev Yaroslavsky, a former Los Angeles County supervisor who represented L.A.'s foothills from 1994 to 2014. “In a way, Los Angeles itself is an engineering feat: It's an accidental city that was promoted by the

sense that anything is possible. But the engineers also didn't fully anticipate the implications of what they were doing."



Firefighters battle a brush fire in Griffith Park in 1929.

(Los Angeles Times)

For thousands of years, Indigenous people lived in L.A.'s mountains. Some settled in the village of [Topanga](#), a mile up the coast from what is now Pacific Palisades.

But native Californians who were drawn to the woodlands at the base of mountains had a different relationship with fire, Ethington said; they chose not to live in the narrow canyons that were flood-prone and dangerous fire traps when dry Santa Ana winds blew.

“They knew it’s perilous for basic reasons: It’s a Mediterranean environment that has a necessary regular annual drought,” Ethington said. “Most of the rain falls within a few months ... and then the rest of the year is dry, so it’s highly flammable.”

Every year, Indigenous people set small low-intensity fires to manage the landscape and clean out low-lying brush — a process that magnified the yield of their plants for medicine and craft-making. It also helped to prevent intense crown fires.

The Spanish colonizers suppressed this intentional annual brush burning, claiming it was incompatible with agriculture. In 1850, when California became the nation’s 31st state, legislators passed the Act for the Government and Protection of Indians, which [prohibited intentional burning in prairie lands](#).

But the move to suppress fire, some experts say, only magnified the risk of more destructive blazes.

Some L.A. officials sounded the alarm in the height of the 1920s building boom.

In 1923, less than six months after construction began in Hollywoodland, L.A.’s fire chief pushed for an ordinance prohibiting wood shingles after a wildfire destroyed nearly 600 homes in the foothills of the Northern California city of Berkeley.

“Without a doubt,” the city building inspector told the L.A. Times, “the prohibiting of wood shingles should extend from the eastern limits of the city to the outer edge of Hollywood.”

But the lumber industry came out in force against a ban, ultimately persuading L.A. and California not to act.

In 1930, city leaders got another warning — this time closer to home.



Horses are tied to a pole on the beach in Malibu as the Woolsey fire burned in 2018.

(Los Angeles Times)

“FLAMES ROARING THROUGH SANTA MONICA HILLS,” the front page of The Times declared Nov. 1, 1930, as nearly 1,000 men battled a towering wall of fire that blazed south across the Malibu coast. “MAJOR DISASTER LOOMS.”

The wildfire was 25 miles away. But if strong north winds continued to blow, The Times reported, the blaze would engulf remote mountain areas inaccessible to firefighters and fuel up on dense brushland. Firefighters, officials feared, would be helpless to stop it sweeping through Topanga and destroying many of the newly built homes across Pacific Palisades and Hollywood Hills.

Alarmed, L.A. County Supervisor Henry Wright rounded up 100 men to patrol the edges of the city. If the fire got “close into the city of Los Angeles,” Wright said, “our whole city might go.”

Ultimately, the north winds subsided and hundreds of firefighters and volunteers got the fire under control. But with calamity averted, there was little debate on how to avoid future brush fires from tearing through L.A.'s foothill communities.

Wright, the new chair of L.A. County Board of Supervisors, emphasized the need for “an improved method of preventing disastrous forest fires” and developing a county building code and “intelligent zoning.” But a year into the Great Depression, unemployment was the county’s biggest priority. The county created a fund for hundreds of men to work on firebreaks. Beyond that, there was little effort to rethink how, or whether, to build homes in fire-prone hills.

After World War II, economic growth and GI benefits fueled another rapid building boom. As people moved to new subdivisions on former ranchland in the San Fernando Valley, hillside lots were no longer on L.A.'s outskirts. They were just another, highly desirable, part of L.A. suburbia.

The risks magnified as new generations pushed farther into natural spaces, creating fire-belt suburbs.

In Pacific Palisades, already less isolated after the extension of Sunset Boulevard and the 1937 opening of Pacific Coast Highway, single-family homes ventured farther up the canyons. In Altadena, new tracts were built on farmland. In Bel-Air, the builder of a new subdivision of mid-century modern homes in Roscomare Valley [campaigned](#) for a 1952 statewide proposition to fund schools, confident that would lure more residents.

When experts from the National Fire Protection Assn. surveyed Los Angeles in 1959, “they found a mountain range within the city, combustible roofed houses closely spaced in brush-covered canyons and ridges, serviced by narrow roads,” according to a [documentary](#) produced by the Los Angeles Fire Department. “They called it ‘A Design for Disaster.’”



Actor Kim Novak uses a garden hose to wet down the roof of her Bel-Air home during the 1961 fire.

(Ellis R. Bosworth / Associated Press)

Just two years later, the Bel-Air fire showed the world catastrophic scenes of Los Angeles.

L.A. officials made a number of reforms. But even as L.A.'s fire chief noted the progress the city had made, including tightening restrictions on wooden

roofing on new homes, he told The Times in 1967 that the bulk of homes still had shake or shingle roofs. The battalion commander of the Fire Department's mountain patrol said they couldn't eliminate all brush from slopes without causing erosion and landslides, and some homeowners were resistant to removing flammable vegetation: "They like it for its scenic value."

As L.A.'s slopes filled with audacious mid-century modern steel and glass mansions and even a UFO-style octagon resting on a 30-foot pole, a national 1968 [report](#) by the American Society of Planning Officials identified "the subdivision of hilly areas" as a growing problem. Planners were under pressure, the report said, from developers trying to cut costs to modify subdivision controls with lower standards for hillside areas than flat land. If the controls were not modified, subdividers simply leveled the hills.

The problem was particularly acute in L.A.: Two-thirds of the city's new homes were being built on hillside lots, according to a city official. All were potentially vulnerable to landslides.

The failure to provide access to subdivisions from more than one entrance, the L.A. County engineering department said in a report, "greatly endangers public safety."



Then-U.S. Sen. Dianne Feinstein surveys the remains of an Altadena home after a 1993 fire.

(Paul Sakuma / Associated Press)

Foothills residents often resisted efforts to widen narrow, winding streets. In 1970, as new housing developments were planned across the Santa Monica Mountains, homeowner associations objected to a city master plan that would widen and extend existing canyon roads linking Sunset Boulevard and Mulholland Drive. L.A.'s city traffic engineer, Sam Taylor, argued that fire and emergency personnel must have alternative road access in case other roads were blocked.

“Either the mountains should not be developed,” Taylor said, “or we should provide streets to take care of the thousands of new homes.”

The [1970 Clampitt and Wright fires](#) merged to burn 435,000 acres from Newhall to Malibu, killing 10 people and destroying 403 homes. The 1978 [Mandeville Canyon fire](#) destroyed more than 230 homes, killed three people and injured at least 50. In 1993, the [Old Topanga fire](#) burned 18,000 acres in Malibu, killed three people and destroyed 388 structures, prompting the writer and urban theorist Mike Davis to write his seminal [1995 essay](#), “[The Case for Letting Malibu Burn.](#)”

“‘Safety’ for the Malibu and Laguna coasts as well as hundreds of other luxury enclaves and gated hilltop suburbs is becoming one of the state’s major social expenditures, although — unlike welfare or immigration — it is almost never debated in terms of trade-offs or alternatives,” Davis argued in “[Ecology of Fear: Los Angeles and the Imagination of Disaster.](#)”

People continued to move into fire-prone foothills and valleys. Between 1990 and 2020, the number of homes in the metro Los Angeles region’s wildland-urban interface, where human development meets undeveloped wildland, swelled from 1.4 million to 2 million — a growth rate of 44%, according to David Helmers, a geospatial data scientist in the Silvis Lab at the University of Wisconsin-Madison.

In 2008, California significantly strengthened its building code, requiring developers of new homes in high fire-risk areas to use fire-resistant building materials, enclose eaves to stop them from trapping sparks and insert mesh screens over vents to prevent embers from getting into homes.

Experts in fire mitigation said the new building code was a huge step forward — except that it did not apply to existing development.

“We’re hamstrung,” said Michael Gollner, an associate professor of mechanical engineering at UC Berkeley who studies fire risk. “Most things are already built, and they’re built to old codes, they’re built with old land-use planning decisions, so they’re close together and not built in a resilient, fire-resistant way. It’s very hard to make changes after the fact.”

The blazes got more intense. The [2009 Station fire](#) became the largest in L.A. County history, charring 250 square miles, destroying more than 200 structures and killing two county firefighters. The [2018 Woolsey fire](#) destroyed

more than 1,600 structures, killed three people and forced more than 295,000 to evacuate.

In 2018, the Los Angeles County Board of Supervisors approved [a 19,000-home development](#) in Tejon Ranch along Interstate 5 despite concerns that the land was within “high” and “very high” fire hazard severity zones. Backers say they can mitigate fire risk.

In 2020, the state Legislature passed a bill requiring households in fire-prone areas to clear anything flammable, such as vegetation or wooden fences, from within 5 feet of their home. [But the rule is still not enforced.](#)

Many homeowners — who sought homes surrounded by nature — resisted stripping their land of shrubs and trees.

Yaroslavsky, the former Los Angeles County supervisor, said he didn’t like to speculate on what L.A. officials could have done better, but it was important to learn from mistakes.

“It’s one thing to make a mistake or misjudge something or be ignorant,” he said. “It’s another thing not to learn from the consequences of that lack of knowledge.”

Looking back over more than a century of development, many blame L.A. leaders’ relentless pursuit of growth. Char Miller, a professor of environmental history at Pomona College and author of [“Burn Scars,”](#) a history of U.S. wildfire suppression, said new development was the “spark plug” for many of the region’s fires.

“We’ve created this dilemma by policy,” Miller said. “Every city council, every town hall, every planning zoning and architectural commission greenlights and rubber-stamps development because development is growth, and growth builds an economy.”

For Pyne, California’s “unholy mingling of built and natural landscapes” ultimately undermined any fire protection. But he noted that fires were caused not only by people moving into wildland areas. In Mediterranean Europe, fires

are breaking out in Greece, Portugal and Spain as people move out of rural areas and small farms go feral.

Some argue that turning ranchland into public parks and conservation areas have exacerbated fire risk. [According](#) to Crystal Kolden, director of the Fire Resilience Center at UC Merced, vast swaths of the Santa Monica Mountains were ranched until the 1960s: The establishment of Topanga State Park in the 1960s and [Santa Monica Mountains National Recreation Area](#) in 1978 meant that cattle no longer grazed on shrubs, controlling flammable brush and preventing the spread of intense fires.

Even as governments introduced new fire protection measures, Pyne said, they could not seem to do so fast enough to meet the escalating threat from land-use planning decisions and climate change.

“You have to build to survive a blizzard of sparks,” Pyne said. “Fire is going to come as long as the winds are able to blow.”

After the Jan. 7 fires caused an estimated \$250 billion in property damage, some make the case for a retreat: “I don’t care what you build back into the Palisades,” said Miller, who has [suggested](#) L.A. follow the city of Monrovia and float bonds to purchase lots from willing sellers. “You’re building back to burn.”

Others have [proposed](#) L.A. pause rebuilding to consider stricter construction guidelines, such as mandating even more fire-resistant materials and installing fire shutters on every home.

But the human impulse to rebuild, like the fires, is relentless.

Days after swaths of Pacific Palisades and Altadena were destroyed, [Gov. Gavin Newsom](#) and Los Angeles [Mayor Karen Bass](#) issued executive orders to expedite rebuilding by relaxing environmental and regulatory obstacles.

Times editorial library director Cary Schneider contributed to this report.