



June 16, 2023

[Clerk.plumcommittee@lacity.org,]

Planning and Land Use Committee

Los Angeles City Council

Attention: Candy Rosales, Legislative Assistant
200 North Spring Street, Room 395
Los Angeles, CA 90012

Re: RESPONSES TO APPEAL LETTER FOR THE TENTEN HOLLYWOOD PROJECT [CPC-2020-3253-DB-SPR-HCA; ENV-2020-3254-CE]

Dear Chair Harris-Dawson and Members of the Planning and Land Use Committee:

On behalf of 1149 Gower Street Hollywood, LLC (Applicant), Parker Environmental Consultants has reviewed the 86 page rebuttal letter dated June 15, 2023 submitted by Lozeau Drury, LLP, on behalf of Supporters Alliance for Environmental Responsibility ("SAFER" and "Appellant"). Lozeau Drury's June 15, 2023, comments largely reiterate the same comments raised in their earlier comment letter (dated September 21, 2022), but provide some new information and/or rebuttal points that are factually incorrect and warrant further responses and clarification. While a large portion of the Appellant's letter provides summaries of other scientific reports and data associated with unrelated projects and/or circumstances that are not reflective of the Proposed Project, the Appellant's main comments can be summarized as follows: (1) the Project Site has value as habitat for a rare species due to the observation of three red-tailed hawks flying nearby; (2) the fact that the Project site has value as habitat for a rare species constitutes an impact related to an unusual circumstance; (3) Mr. Offerman does not agree with our prior responses regarding potential hazards associated with exposure to formaldehyde in the Project's building materials, and (4) the Appellant claims that the City failed to provide substantial evidence that the Project will not have significant noise impacts.

1. The Appellant erroneously claims that the Project Site has value as habitat for a rare species.

The Appellant's assertion that the Project Site has value as habitat for a *rare* species is factually incorrect and is not supported by substantial evidence. Despite the Class 32 Categorical Exemption's finding to the contrary, the Appellant's September 22, 2022, comment letter made the unfounded assertion that the Project Site may have value to the California Gnatcatcher, which is identified under the U.S. Endangered Species Act as a "threatened" species and as a "Bird

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Species of Special Concern” by the State of California. The current comment letter includes a biological opinion paper by Dr. Shawn Smallwood PH.D., which corroborates the findings in the Class 32 Categorical Exemption and the expert opinion provided by Glenn Lukos Associates (March 13, 2023) that the Project Site does not contain any habitat, or potential value to support the California Gnatcatcher. Specifically, Dr. Smallwood Ph.D., states:

“GLA (2023) argues against the potential occurrence of California gnatcatcher, which is a species that I agree is highly unlikely to occur at the project site (except for those passing through during dispersal or migration, as noted earlier). (See Dr. Smallwood, Ph.D. opinion letter at page 6)

After acknowledging this fact, Dr. Smallwood changes direction and makes the assertion that, based on his observations from the periphery of the Project Site, three red-tailed hawks (*Buteo jamaicensis*) flying “nearby” constituted a rare species occurrence that precludes the use of a Class 32 Categorical Exemption.¹ It should be noted that the Appellant’s concerns regarding the red-tailed hawk are new comments that were not raised in prior comment letters. Also, it is important to point out that three red-tailed hawks were observed flying nearby the Project Site but were not observed on the Project Site. No evidence was provided demonstrating that red-tailed hawks either utilize or rely on the Project Site for habitat, nesting, foraging, or resting. The fact that birds may fly over the Project Site does not indicate that the Project Site provides any habitat value that the species may be dependent upon. For example, hawks and birds may fly over a toxic landfill, but a toxic landfill is not considered valuable habitat for any bird species.

Second, the assertion that the red-tailed hawk is a **rare** species is incorrect and based entirely on conjecture. On page 6 of his opinion paper Dr. Smallwood states that:

*“[T]he red-tailed hawk is a raptor, and therefore is protected by California Fish and Game Code §3503.5, otherwise known as the Birds of Prey Code. Raptors are protected by this Code because raptors are top predators wherever they live. **Their positions in the food chain naturally require that they are rare, which is one of the key conditions – and one of the key words – that meets the CEQA definition of special status species.**”*
[emphasis added]

While it is true that the red-tailed hawk is a raptor and is protected under California Fish and Game Code §3503.5, the red-tailed hawk is not an endangered, rare, or threatened species pursuant to the criteria enumerated in CEQA Guidelines Section 15332 (“Class 32 Categorical Exemption”). The assertion that the red-tailed hawk’s position in the food chain requires that it is *rare* is entirely

¹ Throughout Dr. Smallwood’s opinion letter he incorrectly uses the term “Categorical Exclusion.” The term “Categorical Exclusion” is a defined term under the National Environmental Protection Act (NEPA) and is not used in CEQA. For all intents and purposes, we assume his comments are referring to the Categorical Exemption under CEQA.

erroneous and not supported by any definition of an endangered, rare, or threatened species as defined in the California Endangered Species Act (ESA) or the State CEQA Guidelines.

The term **rare** “is technically used only for plants, as defined under the California Native Plant Protection Act. When the California Endangered Species Act (CESA) was enacted, all animals with a rare classification were reclassified as threatened; however, rare plants were not.”² The red-tailed hawk is not listed as a threatened or endangered species, and is not listed as a special species of concern. Furthermore, for purposes of CEQA, the term Endangered, Rare or Threatened Species is a defined term pursuant to Section 15380(b-d). (See Glenn Lukos Associates Letter, at page 4). As defined under Section 15380(b)(2): a species of animal or plant is rare when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in the Federal Endangered Species Act.

The red-tailed hawk meets neither criteria (A) nor (B). Contrary to Dr. Smallwood’s opinion that the red-tailed hawk is rare, it is actually recognized by the California Department of Fish and Wildlife as a common species with permanent breeding and winter resident and migrant life patterns with a broad range throughout the State of California.³ Other recognized literature and field guides also describe the red-tailed hawk as a common species. The CornellLab All About Birds website, for example, characterizes the red-tailed hawk as “probably the most common hawk in North America.”⁴ The National Audubon Society characterizes the red-tailed hawk as “widespread and common.”⁵

With respect to Dr. Smallwood’s comments regarding bird fatalities due to window collisions, it should be noted that this assessment is not a CEQA issue under the Class 32 CEQA Exemption criteria, or generally under CEQA. Additionally, this specific issue of concern was not raised in the Appellant’s earlier comments and was not brought to the lead agency’s attention until after

² Sacramento County, *Planning and Environmental Review*, “Special Status Species,” available at https://planning.sacounty.net/InterestedCitizens/Pages/ER_SpecialStatusSpecies.aspx (accessed on June 15, 2023).

³ See *Range Map for the Red Tailed Hawk* available at: [\[https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1676&inline=1\]](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1676&inline=1), accessed June 15, 2023, and *Life History Account for the Red-Tailed Hawk*, available at: [\[https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1675&inline=1\]](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1675&inline=1), accessed June 15, 2023.

⁴ See CornellLab All About Birds website at: https://www.allaboutbirds.org/guide/Red-tailed_Hawk/overview, accessed June 16, 2023.

⁵ See *The Audubon Society Guide to Northwestern Birds* at: <https://www.audubon.org/field-guide/bird/red-tailed-hawk>, accessed June 15, 2023.

the Project's approval. Nevertheless, for informational purposes it should be noted that the Project design has been reviewed and approved by the Department of City Planning's architectural review committee. While the Project does contain windows, the use of windows and glass is not excessive. The Project's façade is largely comprised of solid surfaces such as steel troweled cement plaster and finished exposed concrete on much of the exterior surfaces. Additionally, the architect has incorporated the use of colored glass in some of the glass architectural components, which is consistent with the Appellant's recommendations. As such, impacts associated with bird-window collisions would be less than significant, even if it were to be a recognized CEQA impact issue, which it is not.

2. The Appellant claims that the Project Site's value as habitat for a rare species is an unusual circumstance.

As provided above, Dr. Smallwood's opinion that the red tailed hawk is a rare species that precludes the use of a Class 32 Categorical Exemption is factually incorrect. As supported by the findings in the Justification To Support A Categorical Exemption (August 2021) , and the expert biological opinion prepared by Glenn Lukos Associates (March 2023), the Project Site has no value as habitat for endangered, rare or threatened species. Furthermore, the mere observance of three red-tailed hawks flying nearby the Project Site does not provide substantial evidence that the Project would result in any harm or impacts to the red-tailed hawks that may occur in the broader project vicinity. No evidence has been provided that indicates red-tailed hawks nest on site. Further, assuming that these birds were to nest in on-site trees or adjacent street trees that are proposed for removal (either now or in the future), the Applicant and its contractors would be prohibited from taking or harming any nesting bird species under the Federal Migratory Bird Treaty Act ("MBTA") (see Justification To Support A Categorical Exemption (August 2021) at page 44). The removal of any street trees would require the review and approval of the City of Los Angeles Board of Public Works, Urban Forestry Division, and are typically conditioned to provide two replacement trees for every tree removed. The conditions of approval for any tree removals would also require compliance with the MBTA and any other applicable laws. Typically, standard conditions of approval require tree removals to occur during the non-nesting season. If this cannot be accommodated, the Applicant would be required to retain a qualified biologist to conduct weekly nesting bird surveys prior to and during tree removal activities to ensure nesting birds are not impacted. This process and standard conditions of approval are routine throughout the City and County of Los Angeles and are thus do not meet the criteria of unusual circumstances. As such, a significant environment impacts resulting from an unusual circumstance would not occur.

3. Mr. Offerman disagrees with our prior responses to his assertion that the Project would expose future residents and visitors to unhealthy levels of formaldehyde.

Mr. Offerman's first comment claims that our prior responses did not address his prior concerns related to (1) formaldehyde concentrations that exceed the Proposition No Significant Risk Levels (NSRL) for formaldehyde, (2) additional noise measurements need to be conducted to assess the ambient CNEL or Ldn dBA sound levels for the purpose of selecting the appropriate STC for the windows, and (3) an air quality analyses need to be conducted to determine what MERV rating filters are required to maintain indoor concentrations of PM_{2.5} less than the California and National PM_{2.5} annual and 24-hour standards. Each of these issues were responded to in our prior responses to comments dated March 24, 2023. With regard to applying the NSLR and risk characterization assumptions for formaldehyde, see our prior Response to Comment 1.4 on page 8. With respect to outdoor noise levels and how the use of windows would affect indoor air quality and the use of MERV rating filters, see our prior Response to Comment 1A.4 on page 30.

Mr. Offerman's comments reiterate his request that the Applicant select composite wood materials at the design stage based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers," (CDPH, 2017), and use the Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde. As stated in our prior Response to Comment 1A.2 on page 24, the Proposed Project would be built with materials that are compliant with current regulations⁶, which establish appropriate levels of formaldehyde in composite wood materials. The method for testing applies to the manufacturers at the production facility and is not a post-consumer analytical test. Mr. Offerman's provides no evidence, let alone substantial evidence, that use of wood materials compliant with current regulations will result in a significant cancer impact.

4. The Appellant claims that the City failed to provide substantial evidence that the Project will not have significant noise impacts.

With respect to the Appellant's rebuttal comments pertaining to the Project's noise impacts, the revised response letter generally restates the same comments that were addressed in our prior responses to comments. With respect to the representative noise monitoring data, our analysis was conducted in conformance with the requirements of the LAMC for daytime noise

⁶ *It is well established under CEQA that a lead agency, here the City, can conclude that an impact is not significant based on the fact that compliance with laws will address any potential impact to insignificance. (Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337.)*

measurements. For evening ambient noise levels, the concern that the Project's use of HVAC systems would be disruptive to other residential land use nearby is unfounded. As stated on page 55 of the Justification To Support A Categorical Exemption (August 2021), the design and placement of HVAC units and exhaust fans would be required to comply with the regulations under Section 112.02 of the LAMC, which prohibits noise from air conditioning, refrigeration, heating, pumping, and filtering equipment from exceeding the ambient noise level on the premises of other occupied properties by more than five decibels.⁷ The 5 dBA limit is a performance based threshold that, if exceeded, would be based on ambient noise levels at the time of the noise exceedance, not on any ambient levels identified in the Justification To Support A Categorical Exemption (August 2021). Further, if the Project's future occupants are running their HVAC equipment at night, it is likely that other nearby residences would also be running their HVAC units at the same time which would alter the ambient noise level baseline and off-set the Project's noise impact.

Similarly, the Appellant's concerns regarding nighttime activities on the roof deck are unfounded. All outdoor activities on the exterior roof deck levels would be limited to residents and not commercial uses. It is unreasonable to speculate that residents would be unruly or excessively loud when they reside at the same location.⁸ The use of the outdoor areas by residents would be subject to the respective Homeowner Association or lease conditions and the LAMC, and would be typical for residential buildings to ensure spaces are utilized in a manner that is compatible with on- and off-site residential land uses. Noise complaints would be addressed by the LAPD, if any, and potential complaints do not demonstrate a significant impact under CEQA. As such, noise impacts would be less than significant.

Should you have any questions regarding any of the responses please contact me at (661) 257-2282 or by email at shane@parkerenvironmental.com.

Sincerely,

PARKER ENVIRONMENTAL CONSULTANTS



Shane E. Parker, Principal

cc: More Song, City Planner, Department of City Planning [More.Song@lacity.org]

⁷ See Footnote 6 that the City can conclude that an impact is not significant based on the fact that compliance with laws will address any potential impact to insignificance. (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.)

⁸ Speculation is not substantial evidence. (CEQA Guidelines section 15384.)