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City of Los Altos  
Mayor Weinberg and Councilmembers  
City Manager  
PublicComment@losaltosca.gov.

September 9, 2024

Re: Environmental review mandated for removal of 25 apricot trees within the  
Heritage (Civic Center) Orchard

*Via email*

Dear Mayor Weinberg and Councilmembers,

On behalf of appellants Catherine Nunes, Mary Cunneen Lion, Alice Mansell and the newly formed unincorporated public benefit organization, Preservation Action League Los Altos (PALLA), thank you for the opportunity to comment on the alterations proposed for the historic orchard site, described in the 2011 State Department of Parks Record evaluation HR#15, including the removal of 25 apricot trees within the historic orchard setting, prior to the Council hearing of September 10, 2024.

The City of Los Altos acts as the lead agency under CEQA and is therefore responsible for following the mandates of CEQA in carrying out alterations to a recognized historic site. The History Museum may act as an arm of the City, but it is not the approving agency, and therefore does not hold the same accountability as the lead/responsible agency when it comes to the enforcement of CEQA. Moreover, any alteration to the orchard should be first reviewed by the City's own Historical Commission.

As a land use attorney representing numerous public benefit organizations over the years, I can attest that there is substantial evidence in the administrative record of a "fair argument" of impacts to historic resources such that an EIR must be prepared as a matter of law, prior to any further consideration of tree removal, via this tree removal permit, or any other actions considered by the City that would entail tree removal from the historic orchard, be they ministerial or discretionary actions or decisions. Appellants' appeal letter and their exhibits, filed with the appeal and accepted by the City, are incorporated here by reference.

## The California Environmental Quality Act

CEQA declares it state policy to “develop and maintain a high-quality environment now and in the future, and to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state. “It helps safeguard the natural environment as well as *historic places* that you and other members of the community consider too important to tear down. CEQA is the primary legal tool used in California to protect historic sites threatened with demolition. At its simplest, CEQA requires a report to the public (called an “EIR” or “environmental impact report”) describing how a proposed action would affect the quality of life of communities, including our basic rights to clean air, toxic-free buildings, ease of traffic, and **cultural heritage**. It requires our government agencies to avoid or minimize those impacts to the extent feasible by examining alternative approaches to its actions and decisions. The specific ways of reducing these impacts are developed through a public participation process in which the views of neighborhood residents must be taken into account.

## Historic Resources

Permanent removal of trees from the historic orchard would result in impacts to the integrity of the historic setting of the resource, therefore the City must prepare an EIR prior to the consideration of any alteration to this historic site.

“Significant effects” are “substantial, or potentially substantial,” adverse changes in *physical conditions* that exist within the area that will be affected by a proposed action. Pub. Res. Code §§ 21068, 21100, 21151. *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4<sup>th</sup> 1597, 1604; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881. Physical conditions include land, air, water, minerals, flora, fauna, noise, *historic and cultural sites*, and aesthetics. §21060.5.

An action that may cause a substantial adverse change in the significance of an historical resource is an action that may have a significant effect on the environment. Pub. Res. Code §21084.1; Guidelines §15064.5. *League for Protection v. City of Oakland* (1997) 52 Cal.App.4<sup>th</sup> 896; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4<sup>th</sup> 587.

## Boundaries of the Historic Resource

The 2011 State Department of Parks Record HR#15 established that the historic orchard site includes historic orchard lands. Boundaries in this instance does not refer to a land survey but instead to the elements that comprise the historic site. Official City documents, including a 2006 Maintenance Plan and a 2019 Historical Commission Staff Report have established that the historic resource’s acreage is 2.84 acres.

Any attempts to reduce the size of the historic resource site or environs would be considered an alteration to a historic resource that may result in environmental impacts, and therefore must be accompanied by a full environmental analysis. As the evidence presented by appellants in the appeal letter established:

Per City and State registered official documents, the Heritage Orchard is a registered historic resource consisting of a landmark, tree sites, and fruit (trees) across the Civic Center site, and it is stipulated trees can NOT be removed, unless replaced on the tree sites. The protected tree stipulation and site location on the Civic Center inclusive of the Police Station is evidenced in the historic resource description in the 2011 State or California Department of Parks Record HR#15 and in the County recordings as the recorded description. Note Lands/trees/sites included in the “northeast sector of the complex” is the location of the orchard elements surrounding the Police Station. (Exhibit 2)

“Portions of the Smith orchard lands within the Civic Center remain along N. San Antonio Road, north of the Los Altos Library, and in the northeast sector of the complex. A number of trees dating to the period of Smith’s residence appear to remain.

As the City replaces dead or diseased trees as needed, a number of younger trees are also apparent within the orchard tracts. ... Another stipulation was that the remaining apricot trees not be removed; the city maintains and replaces the trees as needed today.

To make a finer point, this description from City official documentation in the 2006 Heritage Orchard Management Plan the description of Heritage Orchard location, acreage and tree sites. It states: (Exhibit 3)

Description of Orchard: The heritage orchard is located at 1 North San Antonio Road in the Civic Center grounds. It surrounds the City Hall building, and parts of the Library, Youth Center and Police Department.

Acreage: 2.84 acres

Number of tree sites: 444

### **CEQA’s Fair Argument Standard**

The EIR is acknowledged as “the heart” of CEQA. Guideline § 15003(a). EIRs provide public agencies with in-depth review of actions that have potentially significant environmental effects. *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795; *Laurel*

*Heights Improvement Association v. UC Regents (Laurel Heights II)* (1993) 6 Cal.4<sup>th</sup> 1112, 1123. The EIR acts as “informational document,” and by utilizing its objective analysis public agencies “shall mitigate or avoid the significant effects on the environment ... whenever it is feasible to do so.” Pub. Res. Code § 21002.1.

Preparation of an EIR is required if there is substantial evidence in the “whole record” of proceedings that supports a “fair argument” that an action “may” have a significant effect on the environment. Guideline §15064(f)(1.) *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4<sup>th</sup> 98, 111-112.

An EIR must be prepared whenever there is substantial evidence that significant effects “may” occur. Pub. Res. Code §§21082.2(a), 21100, 21151. “May” means a reasonable possibility. *League for Protection v. City of Oakland* (1997) 52 Cal.App.4<sup>th</sup> 896, 904-05; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.

Courts have repeatedly affirmed that the fair argument standard is a “low threshold test.” Evidence supporting a fair argument of any potentially significant environmental impact triggers preparation of an EIR *regardless of whether the record contains contrary evidence*. *League for Protection v. City of Oakland* (1997) 12 Cal.App.4<sup>th</sup> 896; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.

### **Indirect and Direct Impacts Must be Studied Under CEQA**

The agency must evaluate a project’s likely secondary or indirect impacts along with its direct impacts. *El Dorado Union High School District v. City of Placerville* (1983) 144 Cal.App.3d 123; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. CEQA therefore requires the analysis of all secondary or indirect impacts, thus even if the City erroneously treats the tree removal as not within the boundaries of the historic site, all of the apricot trees proposed for removal are a part of the historic orchard and would be considered a part of the historic setting that contributes to the integrity of the resource. Any alteration of demolition would need to be analyzed and reviewed in an EIR prior to their removal.

### **Maintenance of the Historic Orchard**

The tree assessment conducted by the orchardist for the History Museum is inadequate and incomplete and cannot be used to qualify the trees as requiring removal. As stated, any alteration to the historic site or its setting must first be accompanied by review within an EIR to fairly assess, disclose to the public the environmental ramifications of the proposed action, provide feasible mitigation

measures and/or propose alternatives that satisfy the agency's objectives while substantially lessening historic/cultural impacts.

Pursuant to the orchardist's assessment, the 25 trees proposed for demolition have not been maintained properly, exhibit stress and are in need of irrigation and care. Twelve of the trees were rated as healthy or in satisfactory health. The transference of airborne brown rot spores can be controlled by proper orchard maintenance, removal of dried fallen fruit, leaf clean up in the fall, and controlled pruning, therefore, the stewards of the resource need not resort to tree removal to ensure a healthy orchard. Individual trees were not evaluated as to the level of brown rot exhibited. The orchardist confirmed that typical treatment for brown rot is pruning.

As an expert with a degree in environmental horticulture, I can attest that brown rot is a common ailment in stone fruits throughout California and proper maintenance techniques are regularly used to control brown rot – removal of the historic apricot trees is not required when routine methods to control brown rot are instituted. Control not eradication of brown rot is the goal.

Moreover, even if some trees are validly proposed for removal, environmental review must be conducted to ensure adequate mitigation and replacement trees are implemented within the context of the compatibility with and retention of, the integrity of the historic site. In this instance, where ongoing maintenance of the orchard will be required, a mitigation monitoring program should be implemented as part of the EIR.

### **Failure to maintain the orchard site may be considered demolition by neglect**

"Demolition by Neglect" is the term used to describe a situation in which the steward of a historic resource intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair. Agencies should not use this kind of long-term neglect to circumvent historic preservation regulations or to clear the ground for future, as yet undefined projects.

### **Cumulative Impacts**

CEQA requires that cumulative impacts of similar actions be considered together in one environmental review document. All phases of an action must be considered in the EIR as the "whole of the action," so that "*environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.*" *Bozung v Local Agency Formation Commission* (1975) 13 C3d 263, 283–284, *Burbank-Glendale-Pasadena Airport Authority v Hensler* (1991) 233 CA3d 577; *Citizens Ass'n*

*for Sensible Development of Bishop Area v County of Inyo* (1985) 172 CA3d 151, 167, Guideline §15126. And, the EIR must include future activities that may become part of the project. *Laurel Heights Improvement Ass'n v Regents of the University of California* (*Laurel Heights I*) (1988) 47 C3d 376, 399.

This is particularly important in this instance; the City has allowed numerous separate actions to proceed that entail the removal of apricot trees and alterations to the historic site without also subjugating these actions to the rigor of environmental review. The City must review the cumulative impacts of all ministerial or discretionary actions that propose removal of the orchard together in one document so that the combined impacts of such removal may be properly assessed and adequate mitigation and alternatives to removal are fairly considered.

For the reasons cited herein, appellants urge the Council to uphold the appeal, deny the permit, and require an EIR be prepared prior to allowing any further alterations to the historic resource or its setting.

Sincerely,



Rachel Mansfield-Howlett  
Attorney for Appellants