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February 28, 2017

Honorable City Councilmembers
200 N Spring Street
Los Angeles, CA 90012
By email:
c/o holly.wolcott@lacity.org,
paul.koretz@lacity.org,
joan.pelico@lacity.org,
Shawn.Bayliss@lacity.org

Re: City Council File 14-0656; City Council Agenda Wednesday, March 1, 2017; CPC-2015-3484-CA and ENV-2015-4197-ND; Objection to Exception from BMO/BHO for CUP uses

Honorable Councilmembers,

On behalf of Sunset Coalition, and Brentwood Residents Coalition[1], while we applaud your leadership in protecting communities from oversized, incompatible development, we object to the inclusion of the phrase "Except as allowed by Section 12.24 F and 14.00 A of this Code" in Section 13 of the proposed Baseline Mansionization Ordinance and Baseline Hillside Ordinance (BMO/BHO) ordinance.

We supported Councilmember Koretz's motion at City Council restoring more restrictive provisions to close loopholes, and we opposed any exemption for institutions in the BMO/BHO. (http://clkrep.lacity.org/onlinedocs/2014/14-0656_mot_12-7-16.pdf.)

We object to certain exemption language for conditional uses[2] that was slipped

[1] Sunset Coalition is an unincorporated association that includes representatives of Westside of Los Angeles Neighborhood & Community Coalition, Upper Mandeville Canyon Association, Bundy Canyon Association, and numerous others. The Brentwood Residents Coalition is a non-profit advocacy group dedicated to the preservation and enhancement of the environment and quality of life in the Brentwood neighborhood of Los Angeles.

[2] Conditionally permitted uses that could be allowed in residential areas as enumerated in LAMC section 12.24 now or in the future include educational and cultural facilities as well as other land uses such as "auditoriums, stadiums, arenas" (LAMC 12.24.U.2), "correctional or penal institutions" (U.5), "land reclamation projects through the disposal of rubbish" (U.13), "motion picture and television studios" (U.15), crematories (W.12), rehabilitation facilities such as drug rehabilitation facilities (W.14), Airbnb and other hotels (W.24), and parking lots (W.37). "Public Benefit projects" include cemeteries (A.1) and mobilehome parks (A.4 and A.7).

into the proposed ordinance after it was considered by the City Planning Commission and was not part of the original intent of the motion, nor part of the originally proposed ordinance. The newly inserted proposed exemption for conditionally permitted uses would be completely at odds with the spirit and intent of the proposed BMO/BHO change ordinance that has been under review for many months, with public hearings as long ago as December 2015.

A. PLUM and the Planning Department Recommended Clearly Stating that the BMO and BHO Restrictions Apply to Conditionally Permitted Uses Including Institutions.

The intent of the BMO/BHO amendment motion was to close loopholes, and exemption of CUP uses was not part of that intent. Our clients were pleased to see the PLUM and Planning Department recommendations that the BMO/BHO would be clarified to state that the BMO and BHO *do* apply to conditionally permited uses. Specifically, as part of its action at the November 29 meeting, the PLUM Committee recommended several modifications to the proposed ordinance including "Clarify that conditionally permitted uses are subject to the provisions of the BMO and BHO." (See PLUM Action at http://clkrep.lacity.org/onlinedocs/2014/14-0656_rpt_plum_11-29-16.pdf.)

Similarly, the Planning Department memorandum to PLUM recommended the City:

> Clarify that Residential Floor Area limitations apply to institutional uses (DCP & DBS request). The Planning staff recommends clarifying that the BMO/BHO regulations are intended to apply to institutional uses (such as schools and houses of worship) as well as residential uses.

(http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_11-28-16.pdf).

As it is currently proposed, an unintended exception from the BMO/BHO for CUP's could be allowed because section 13 states the following (with emphasis added):

> Sec. 13. The first Paragraph of Subdivision 10 of Subsection C of Section 12.21 of the Los Angeles Municipal Code is amended to read as follows:
>
> **Single-Family Zone Hillside Area Development Standards.**
>
> ***Except as allowed by Section 12.24 F and 14.00 A of this Code***, for any Lot zoned R1, RS, RE or RA and designated Hillside Area on the Department of City Planning Hillside Area Map, no Building or Structure nor the addition or remodel of any Building or Structure shall be erected or maintained unless the following development standards are provided and maintained in connection with the

Building, Structure, addition or remodel:

(See http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_01-18-2017.pdf.)

This would be a major change from the current code. The Los Angeles Municipal Code as currently written is strong in preventing the use of section 12.24 F to evade height or area regulations as it currently states (with emphasis added):

> 10. **Single-Family Zone Hillside Area Development Standards. (Added by Ord. No. 181,624, Eff. 5/9/11.)** ***Notwithstanding any other provisions of this Code to the contrary***, for any Lot zoned R1, RS, RE, or RA and designated Hillside Area on the Department of City Planning Hillside Area Map, no Building or Structure nor the enlargement of any Building or Structure shall be erected or maintained unless the following development standards are provided and maintained in connection with the Building, Structure, or enlargement:

This currently written strong code provision also was reflected in section 19 of the originally proposed ordinance at http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_2_09-02-2016.pdf, which also included the "Notwithstanding any other provisions of this Code to the contrary. . ." language that is currently contained in the Los Angeles Municipal Code.

B. The Proposed Ordinance Must Be Amended to Eliminate the Exception of Conditionally Permitted Uses from the BHO/BMO.

The language that needs to be stricken from the draft ordinance (http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_01-18-2017.pdf) is bolded, italicized, and underlined:

> **Single-Family Zone Hillside Area Development Standards.**
>
> ***Except as allowed by Section 12.24 F and 14.00 A of this Code,*** for any Lot zoned R1, RS, RE or RA and designated Hillside Area on the Department of City Planning Hillside Area Map, no Building or Structure nor the addition or remodel of any Building or Structure shall be erected or maintained unless the following development standards are provided and maintained in connection with the Building, Structure, addition or remodel: . . .

Section 13 of the proposed ordinance should be completely stricken, which is simplest, or the offending phrase replaced with the currently existing language in the Municipal Code, which states "Notwithstanding any other provisions of this Code to the contrary. . . ."

C. The Proposed Exemption From the BMO/BHO Would Radically And Adversely Alter Land Use Regulation in Residential Areas.

Granting exemptions from the BMO and BHO to CUP uses or uses enumerated in LAMC section 12.24 would be a drastic policy change. The language in the original ordinances clearly states that the code is intended for *all* residential lots as it states "Notwithstanding any other provisions of this Code to the contrary." For example, the application of the BMO is explicit in the BMO itself: it establishes "new regulations for all single-family residential zoned *properties* (RA, RE, RS, and R1) not located in a Hillside Area or Coastal Zone." The BMO Technical Summary and Clarifications issued on June 24, 2008 contemporaneously with the BMO states "What Properties Are Subject to the New Regulations? *The regulations apply to properties citywide zoned single-family residential* (R1, RS, RE9, RE11, RE15, RA, RE20, and RE 40)".

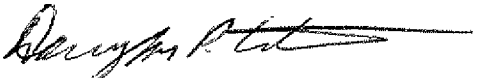
Currently effective restrictions on institutional and other non-conforming projects which are conditionally permitted in residential areas would be rendered inapplicable. Conditional uses in residential areas are not allowed by right so they should be not be granted the extraordinary special privilege of an exemption from BMO and BHO restrictions as they locate or expand in such a zone.

Exempting conditionally permitted uses from the BHO/BMO would not be a clarification but rather is a significant departure from the way the Los Angeles Municipal Code is currently written.

As has been raised in prior correspondence (see enclosures attached), the proposed change to the BMO/BHO is subject to the California Environmental Quality Act (CEQA). This new language was recently put in, with less than 72 hours notice for the hearing. There is no basis for a special or emergency hearing to approve this ordinance. There has been no motion made by a councilperson to include the exemption we are objecting to. We object to the lack of notice and lack of adequate CEQA review.

Thank you for your consideration of our comments.

Sincerely,



Douglas P. Carstens

Enclosures

ENCLOSURE 1

BIRD | MARELLA P.C.
BIRD • MARELLA • BOXER • WOLPERT • NESSIM • DROOKS • LINCENBERG • RHOW

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File 82000.TRF

January 17, 2017

Honorable Councilmember Koretz
200 North Spring Street, Suite 440
Los Angeles, California 90012
By email: paul.koretz@lacity.org
joan.pelico@lacity.org
shawn.bayliss@lacity.org

Re: **CPC-2015-3484-CA and ENV-2015-4197-ND**
Objection to Exemption from BHO for Non-Residential Uses

Dear Councilmember Koretz:

The Federation of Hillside and Canyon Associations, founded in 1952, represents 45 resident and homeowner associations with their approximately 200,000 constituents spanning the Santa Monica Mountains. The mission of the Federation is to promote those policies and programs which will best preserve the natural topography and wildlife of the mountains and hillsides for the benefit of all the people of Los Angeles.

The Federation had enthusiastically supported and applauded your efforts to rid the Baseline Hillside Ordinance of loopholes that have impaired the City's goal of controlling development in hillside areas to protect the environment, wildlife and residents. But after extensive public outreach and community support for the proposed amendments that you championed, language was inserted into the proposed legislation that would affect a major policy change and create a new loophole even more insidious than those the amendments were intended to close. It would completely exempt all non-residential uses within the hillside residential zones protected by the Ordinance. This broad exemption would substantially weaken the Baseline Hillside Ordinance—completely subverting your and the Council's intention to strengthen development regulations in residential zones.

The history of the proposed amendments reveals that the City Council never intended to include the exemption language. When you made the initial motion to amend the Baseline Mansionization Ordinance (and later the Baseline Hillside Ordinance), your objective was unambiguously to remove loopholes from the ordinances. The City Council passed your motion on that basis.

The initial draft of the loop-hole closing amendments was widely disseminated and explained in public workshops. Consistent with the Council's intent, there was no mention of exempting the various non-residential, conditional uses identified in LAMC section 12.24. The purpose of these amendments was to protect residentially-zoned areas from over-development—no matter what the intended use of property within these residential zones. See Motion 14-0656 (May 16, 2014) (describing need to close loopholes for "all single-family zoned properties").

The workshops explaining the purpose and effect of the draft amendments garnered overwhelming public support. The proposed exemption for non-residential uses was not revealed during the public process and would have generated substantial public opposition. The exemption was unceremoniously introduced through a late addendum presented to the Planning Commission, which approved it. The exemption language was then added to the version of the draft amendments containing otherwise stringent, loophole-closing language.

When members of the public later learned of the exemption, they complained. As a result, Planning Staff acted to quell the opposition by recommending an express clarification that "the BMO/BHO regulations are intended to apply to institutional uses (such as schools and houses of worship) as well as residential uses." Letter from Kevin J. Keller, Planning Staff, to PLUM, Council File 0656 (Nov. 28, 2016). PLUM adopted that proposal, recommending on December 5, 2016 that the City Council "clarify that conditionally permitted uses are subject to the provisions of the BMO and BHO."

Unfortunately, the proposed clarification accompanied the watered-down version of the amendments presented to the City Council on December 7, 2016. The City Council's focus was on the inadequacy of the weakened amendments, which failed to close the loopholes in accordance with the Council's prior direction. On your motion, the City Council directed the City Attorney to draft the legislation in accordance with the prior, loophole-closing version of the amendments.

Lost in the shuffle, however, was the fact that the otherwise more-protective version of the amendments included language expressly exempting non-residential uses. This exemption is antithetical to your and the Council's intent to strengthen (not weaken) the protections against over-development. The final ordinance must be drafted to prevent this unintended consequence.

The Hillside Federation asks that you take whatever steps are necessary to assure that amendments intended to close loopholes not create the ultimate loophole—a complete exemption for all non-residential uses within hillside residential zones.

We ask that you meet with Hillside Federation representatives as soon as possible to discuss our concerns and assist you in closing a loophole that the City Council never authorized. I can be reached at 310-201-2100 or trf@birdmarella.com. We look forward to hearing from your staff to schedule a meeting.

Very truly yours,

Thomas R. Freeman

TRF:juh
3360485.1

ENCLOSURE 2

Doug Carstens

From: Save Coldwater Canyon!
Sent: Tuesday, February 14, 2017 9:38 AM
To: Suellen Wagner; Wendy-Sue Rosen; Doug Carstens
Subject: Fwd: Following up re BHO/BMO language and our request for a meeting

FYI SENT today.

---------- Forwarded message ----------
From: **Save Coldwater Canyon!** <savecoldwatercanyon@gmail.com>
Date: Tue, Feb 14, 2017 at 9:37 AM
Subject: Following up re BHO/BMO language and our request for a meeting
To: paul.koretz@lacity.org
Cc: joan.pelico@lacity.org, shawn.bayliss@lacity.org

Dear Councilmember Koretz,

Save Coldwater Canyon is a community organization that is dedicated to the preservation of open space and supports various environmental issues in Los Angeles and Southern California. We represent approximately 1,100 homeowners and residents from all over Los Angeles, including in your district.

We are writing today regarding the final language of the revised BMO/BHO, particularly the proposed exemption for Conditional Use Permitted uses. This exemption was not requested by you as part of the Ordinance revision, a revision which was designed to close loopholes, not open new ones. Planning Staff and PLUM have requested that this exemption language be removed.

Save Coldwater Canyon joined other community organizations and sent your office a letter through our attorney, Chatten-Brown & Carstens, in January 2017 and we still have not heard back from you with any assurance that the CUP exemption language will be struck, or to set up a meeting, as we requested.

We are calling on you, as the maker of the motion, to revise the Ordinance, to defend your years of hard work -- and the community's -- and to protect residents against this insidious exemption. Conditional uses enumerated in the Municipal Code cannot receive special relief. They must be held to the same standards as other uses within the BMO/BHO Zones.

We implore you to stand up for your constituents and all residents of Los Angeles, who are counting on the protections of an improved BMO/BHO. Please remove the exemption language, which would create a new policy change and open the Ordinance to a challenge, if the language remains in place.

Thank you for your time and we look forward to hearing from you about this important matter so we can let our members know where you stand.

Sincerely,
Sarah Boyd
President, SAVE COLDWATER CANYON

cc: Joan Pelico, Chief of Staff
Shawn Bayliss, Land Use

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SAVE COLDWATER CANYON! Inc. is a neighborhood group fighting to preserve and protect the scenic beauty, natural environment, health, safety and welfare of Coldwater Canyon and its neighboring communities.

Find out more at www.savecoldwatercanyon.com

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SAVE COLDWATER CANYON! Inc. is a neighborhood group fighting to preserve and protect the scenic beauty, natural environment, health, safety and welfare of Coldwater Canyon and its neighboring communities.

Find out more at www.savecoldwatercanyon.com
Follow us on Twitter: @SaveColdwater

ENCLOSURE 3

BRENTWOOD RESIDENTS COALITION

zoning | land use | planning | environmental

July 14, 2016

Los Angeles City Planning Commission
Department of City Planning
200 N. Spring St., Rm. 272
Los Angeles, CA 90012

Re: CPC-2015-3484-CA and ENV-2015-4197-ND
Proposed Update to Baseline Mansionization and Baseline Hillside Ordinances

Dear Commission President Ambroz and Commissioners,

The Brentwood Residents Coalition (BRC) is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in the City of Los Angeles, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, and to educate the public on issues that affect the quality of life and environment.

The BRC strongly supports the Baseline Hillside Ordinance (BHO) as well as Councilman Koretz's proposals for closing the loopholes that threaten its efficacy. We are extremely disappointed that the Planning Department's Recommendation Report has proposed a recommendation that would undermine the very purpose of the BHO—to protect hillside areas from overdevelopment inconsistent with their natural beauty and environmental significance to our City.

Planning's first general recommendation in its Recommendation Report (*see* Appendix B, p. B-1) recommends that "institutions" be wholly *exempted* from the BHO (and BMO). That is, BHO zoning limits for size, mass, grading, and other rules intended to protect the natural environment would be applied only to residential properties in hillside areas, which are *permitted by right*, but not to *institutional* properties that are allowed only conditionally. The recommendation is an unjustifiable gift to institutions that operate in residentially-zoned hillside areas as non-conforming uses under conditional use permits. The proposed exemption would be inconsistent with the institutions' lesser (conditional) property rights even though institutions pose greater risks than residential properties.

The recommended exemption for non-conforming institutional properties couldn't be harder to find. That's why this Commission is unlikely to see many complaints about the exemption—nobody knew about it. Worse than that, however, is the disingenuous explanation that the exemption is "not necessary, but may be desirable for clarity." What you are not being told is that Planning's position that zoning laws apply *only* to by right properties is being litigated. And Planning is not likely to prevail on that question because its position is nonsense.

Planning claims that zoning laws don't apply to non-conforming uses because any mitigating conditions needed can be imposed as conditions of approval to conditional use permits that are granted. There is no authority for that unprecedented argument and it violates the first principle of variance law—that the burden on a party seeking a variance from zoning restrictions is necessarily heavy, to protect the integrity of the neighborhood.

P.O. BOX 491103 LOS ANGELES, CA 90049
www.BrentwoodResidentsCoalition.org

Zoning laws are designed to protect neighboring property owners' long-term interests by limiting the right of all property owners to develop their land in a manner inconsistent with the zoning restrictions. *Stolman v. City of Los Angeles*, 114 Cal.App.4th 916 (2004). Thus, the City cannot grant variances from zoning laws like the BHO absent factually-supported findings that all elements needed for a variance have been met. As the Supreme Court explained, courts must ensure compliance with the *stringent variance standard* to protect the rights of neighboring property owners:

> [C]ourts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.

Topanga Assoc. for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 517-18 (19__).

A conditional use permit, by contrast, does not permit the violation of zoning laws. A "CUP" allows a property use that is authorized by statute, but not on a "by right" basis. A CUP provides *some* protection to neighbors and the environment, but not the stringent protection conferred under the variance standard, which allows zoning variances only in extraordinary circumstances.

Planning's position that an exemption is "not necessary" is misleading at best. If the exemption is approved, it will be far easier for institutions to damage hillside environments in ways that the BHO does not permit and that would not be allowed under the more stringent variance standard.

Needless to say, there has been no environmental review of this supposedly unnecessary exemption. Nor could there have been, since the recommended exemption was made by staff on July 7, a full week after the negative declaration for the proposed ordinance was released to the public on June 30. The potential environmental impacts of exempting institutions from the BHO are clearly substantial and would mandate a thorough environmental impact report.

Respectfully submitted,

Tom Freeman

Wendy-Sue Rosen

John P. Given

ENCLOSURE 4

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January 17, 2017

Honorable Councilmember Koretz
200 N Spring Street, Suite 440
Los Angeles, CA 90012
By email: paul.koretz@lacity.org,
joan.pelico@lacity.org,
Shawn.Bayliss@lacity.org

Re: CPC-2015-3484-CA and ENV-2015-4197-ND; Objection to Exemption from BMO/BHO for Institutional and Other CUP Projects

Dear Councilmember Koretz,

On behalf of Sunset Coalition, Brentwood Residents Coalition, Brentwood Hills Homeowners Association, and Save Coldwater Canyon[1], we applaud your leadership in protecting communities from oversized, incompatible development.

We support your motion at City Council restoring more restrictive provisions to close loopholes, but we oppose any exemption for institutions in the Baseline Mansionization Ordinance and Baseline Hillside Ordinance (BMO/BHO). (http://clkrep.lacity.org/onlinedocs/2014/14-0656_mot_12-7-16.pdf.) As the BMO/BHO fact sheet posted on the Planning Department's website states, portions of the proposed changes would eliminate floor area exemptions for the first 100 square feet of overheight structures and eliminate floor area exemptions for covered porches and patios. These types of cleanup changes are minor and promote more restrictive development controls.

[1] Sunset Coalition is an unincorporated association that includes representatives of Westside of Los Angeles Neighborhood & Community Coalition, Upper Mandeville Canyon Association, Bundy Canyon Association, and numerous others. The Brentwood Residents Coalition is a non-profit advocacy group dedicated to the preservation and enhancement of the environment and quality of life in the Brentwood neighborhood of Los Angeles. Brentwood Hills Homeowners Association (BHHA) is a non-profit voluntary organization representing about 450 homes in the hills north of Sunset Blvd. and West of Mandeville Canyon. BHHA has been very active in advocating for properly scaled development in hillside areas, compliance with appropriate environmental review, protection of open space, and mitigating traffic impacts of development. Save Coldwater Canyon is a neighborhood group dedicated to preserving and protecting the scenic beauty, natural environment, health, safety and welfare of Coldwater Canyon and its neighboring communities. The organization seeks to support the wildlife corridor in the Santa Monica Mountains surrounding Coldwater Canyon, the preservation of the Canyon's open spaces, the reduction of traffic and pollution in the Canyon, and to ensure the safety, quality of life and enjoyment of the Canyon's hillside residents.

However, we object to certain exemption language for conditional uses[2] that was slipped into the proposed ordinance before it was considered by the City Planning Commission and was not part of the original intent of your motion. A proposed change that was added to exempt conditionally permitted uses including but not limited to institutional uses from BMO/BHO restrictions is a radical change and would create extensive challenges for both City staff and the affected communities in attempting to control development of conditionally permitted uses in residential areas. The newly inserted proposed exemption for conditionally permitted uses would be completely at odds with the spirit and intent of the proposed BMO/BHO change ordinance that has been under review for many months, with public hearings as long ago as December 2015.

A. PLUM and the Planning Department Recommend Clearly Stating that the BMO and BHO Restrictions Apply to Conditionally Permitted Uses Including Institutions.

Our clients' understanding is that the intent of your motion was to close loopholes, and exemptions of CUP uses was not part of that intent. They were pleased to see the PLUM and Planning Department recommendations that the BMO/BHO would be clarified to state that they *do* apply to conditionally permited uses. Specifically, as part of its action at the November 29 meeting, the PLUM Committee recommended several modifications to the proposed ordinance including "Clarify that conditionally permitted uses are subject to the provisions of the BMO and BHO." (See PLUM Action at http://clkrep.lacity.org/onlinedocs/2014/14-0656_rpt_plum_11-29-16.pdf.)

Similarly, the Planning Department memorandum to PLUM recommended the City:

> Clarify that Residential Floor Area limitations apply to institutional uses (DCP & DBS request). The Planning staff recommends clarifying that the BMO/BHO regulations are intended to apply to institutional uses (such as schools and houses of worship) as well as residential uses.

(http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_11-28-16.pdf).

It is necessary to be sure this change is effectuated in the ordinance that is prepared by the City Attorney and reviewed by the City Council.

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[2] Conditionally permitted uses that could be allowed in residential areas as enumerated in LAMC section 12.24 now or in the future include educational and cultural facilities as well as other land uses such as "auditoriums, stadiums, arenas" (LAMC 12.24.U.2), "correctional or penal institutions" (U.5), "land reclamation projects through the disposal of rubbish" (U.13), "motion picture and television studios" (U.15), crematories (W.12), rehabilitation facilities such as drug rehabilitation facilities (W.14), Airbnb and other hotels (W.24), and parking lots (W.37).

As it is currently proposed it appears that in several places there are provisions that would defeat the Planning Department and PLUM intent to have the BMO/BHO apply to conditionally permitted uses. The Planning Department and PLUM recommendation was not included in the motion passed by City Council on December 7, 2016. (http://clkrep.lacity.org/onlinedocs/2014/14-0656_mot_12-7-16.pdf.) We sent a letter to the City Planning Commission on July 20, 2016 objecting to this change. (Enclosure 1.)

B. The Proposed Ordinance Must Be Amended to Eliminate Exemptions of Conditionally Permitted Uses from the BHO/BMO.

The language that needs to be stricken from the draft ordinance (http://clkrep.lacity.org/onlinedocs/2014/14-0656_misc_2_09-02-2016.pdf) is bolded and underlined:

Amended text proposed for Proposed Ordinance Sections 2, 5, 8 and 11:

. . . **C. Area (Development Standards).** No building or structure nor the enlargement of any building or structure shall be erected or maintained, **except for conditionally permitted uses enumerated in Section 12.24**, unless the following yards, lot areas, and floor area limitations are provided and maintained in connection with the building, structure, or enlargement: . . . .

And this from Section 19:

. . . **10. Single-Family Zone Hillside Are Development Standards.** Notwithstanding any other provisions of this code to the Contrary, for any Lot zoned R1, RS, RE, or RA and designated Hillside Area on the Department of City Planning Hillside Are Map, no Building or Structure nor the addition or remodel of any Building or Structure, **except for conditionally permitted uses enumerated in Section 12.24**, shall be erected or maintained unless the following development standards are provided in connection with the Building, Structure, addition or remodel. . . .

C. The Proposed Conditionally Permitted Use Exemption From the BMO/BHO Would Radically And Adversely Alter Land Use Regulation in Residential Areas.

Granting exemptions from the BMO and BHO to CUP uses or uses enumerated in LAMC section 12.24 would be a drastic policy change. The language in the original ordinances clearly states that the code is intended for *all* residential lots. For example,

the application of the BMO is explicit in the BMO itself: it establishes "new regulations for all single-family residential zoned *properties* (RA, RE, RS, and R1) not located in a Hillside Area or Coastal Zone." The BMO Technical Summary and Clarifications issued on June 24, 2008 contemporaneously with the BMO states "What Properties Are Subject to the New Regulations? *The regulations apply to properties citywide zoned single-family residential* (R1, RS, RE9, RE11, RE15, RA, RE20, and RE 40)".

Currently effective restrictions on institutional and other non-conforming projects which are conditionally permitted in residential areas would be rendered inapplicable. Conditional uses in residential areas are not allowed by right so they should be not be granted the extraordinary special privilege of an exemption from BMO and BHO restrictions as they locate or expand in such a zone.

Exempting conditionally permitted uses from the BHO/BMO would not be a clarification but rather is a significant departure from the way the Los Angeles Municipal Code is currently written.

Thank you for your consideration of our comments. We would respectfully like to ask that you or your staff meet with our clients about how the community's concerns about the critical issues raised in this letter will be addressed. Ideally, such a meeting would be as soon as possible before the Ordinance is further considered. We respectfully ask that you or your staff contact us at your earliest convenience at (310) 798-2400, extension 1 or dpc@cbcearthlaw.com.

Sincerely,

Douglas P. Carstens

Enclosure: Chatten-Brown & Carstens letter dated July 20, 2016

ENCLOSURE 1

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July 20, 2016

Los Angeles City Planning Commission
Department of City Planning
200 N. Spring St. Rm. 272
Los Angeles CA 90012
Email: CPC@lacity.org

Department of City Planning,
Code Studies Division,
200 N Spring St Room 701,
Los Angeles, CA 90012.
Email: NeighborhoodConservation@lacity.org

Re: CPC-2015-3484-CA and ENV-2015-4197-ND; Objection to Adoption of Negative Declaration and Recommendation of Approval of Exemption from BMO/BHO for Institutional and Other CUP Projects

Dear Commission President Ambroz and Honorable Commissioners:

On behalf of Sunset Coalition, Brentwood Residents Coalition, Brentwood Hills Homeowners Association, and Save Coldwater Canyon[1] we object to the recent addition of a major change to the Baseline Mansionization Ordinance/ Baseline Hillside Ordinance (BMO/BHO) under the guise of a "clarification." This supposed "clarification" would exempt institutional and other conditional use permit (CUP) uses from the provisions of the BMO and BHO. The proposed change is set forth in Appendix

[1] Sunset Coalition is an unincorporated association that includes representatives of Westside of Los Angeles Neighborhood & Community Coalition, Upper Mandeville Canyon Association, Bundy Canyon Association, and numerous others. The Brentwood Residents Coalition is a non-profit advocacy group dedicated to the preservation and enhancement of the environment and quality of life in the Brentwood neighborhood of Los Angeles. Brentwood Hills Homeowners Association (BHHA) is a non-profit voluntary organization representing about 450 homes in the hills north of Sunset Blvd. and West of Mandeville Canyon. BHHA has been very active in advocating for properly scaled development in hillside areas, compliance with appropriate environmental review, protection of open space, and mitigating traffic impacts of development. Save Coldwater Canyon is a neighborhood group dedicated to preserving and protecting the scenic beauty, natural environment, health, safety and welfare of Coldwater Canyon and its neighboring communities. The organization seeks to support the wildlife corridor in the Santa Monica Mountains surrounding Coldwater Canyon, the preservation of the Canyon's open spaces, the reduction of traffic and pollution in the Canyon, and to ensure the safety, quality of life and enjoyment of the Canyon's hillside residents.

B of the Staff's Recommendation Report (p. B-1) for the July 14, 2016 Planning Commission hearing. (This staff report is available online at http://planning.lacity.org/ordinances/docs/baseline/StaffReport.pdf .) We are attaching a copy of the relevant page, page B-1, for your convenience. (Page 52 of 179 of the Staff Report PDF at the link above.)

We object to the proposed exemption for institutional uses relying upon conditional use permits (CUPs) from the BMO and BHO because the proposed "clarification" would be contrary to the City's clearly written Municipal Code and would potentially create a major change in City land use policy. Currently effective restrictions on institutional and other non-conforming projects in residential areas would be rendered inapplicable. Conditional uses such as institutions in residential areas are not allowed by right so they should be not be granted the extraordinary special privilege of an exemption from BMO and BHO restrictions as they locate or expand in such a zone.

A. The Proposed Institutional Use/CUP Exemption From the BMO/BHO Would Radically And Adversely Alter Land Use Regulation in Residential Areas.

The proposed change identified in the July 14, 2016 Staff Recommendation Report (for the first time in a long process of review) is not a clarification but rather is a significant departure from the way the Los Angeles Municipal Code is currently written and should be implemented. Currently, as was briefed by Sunset Coalition and other petitioners recently in pending litigation in *Sunset Coalition v. City of Los Angeles (Archer)*, Los Angeles Superior Court case BS 157811, in the Los Angeles Municipal Code (LAMC), the term "Residential Floor Area" is defined as "the area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone." (LAMC § 12.03.) The term "Building" is further defined as "any structure" for "enclosure" of "persons." (*Ibid.*) The definition of "building" is not limited to residential structures. Rather, the definition of "Floor Area" states RE zone buildings are "subject to the definition of Residential Floor Area." (*Ibid.*) Thus, under the proper interpretation of the plain language of the Municipal Code, any building located in the residential zone is subject to the BMO and BHO restrictions.

The potential change to the City's application of the BMO/BHO whereby institutions would be exempt from density, height, setback, and other restrictions could be significant. We attach the analysis of Sandra Genis describing the potential effects of this change. (Enclosure 2.) These effects include incompatible construction of institutional uses that could then have significant aesthetic, shadowing, bulk and mass disparity, hydrology, transportation, and other impacts related to violation of height, setback, grading, and other limits. Exceeding density limits could lead to overloading of local residential streets with significant, unplanned traffic and potential safety impacts.

Ms. Genis correctly concludes "it cannot be assured that no significant adverse impacts will occur as a result of the proposed exemption for CUP projects from the BMO and BHO. On the contrary, it is likely that impacts can and will occur." Therefore, an EIR must be prepared, as discussed below.

B. The Process of Proposing and Potentially Approving the Institutional/CUP Use Exemption From the BMO/BHO is Fatally Flawed.

We object to the process that has been used to this point to propose the change in an appendix to a staff report without public notice or reasonable opportunity to understand and comment. The California Environmental Quality Act (CEQA) requires a proposed ordinance be adequately described and its potential effects identified and mitigated. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 394; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50 (2007) [" [T]he public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made."]) Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. (Pub. Resources Code § 21080, subd. (c)(1); Guidelines, § 15070, subd. (a); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.)

CEQA requires a public comment period of at least 20 days prior to the adoption of a negative declaration (ND). (Pub. Resources Code section 21092 (a) and (b); CEQA Guidelines section 15072.) The Planning Commission approved the ND on July 14, 2016, which is a week before the public comment period closed on July 20, 2014, following the June 30, 2016 release of the staff report and ND. (See http://preservation.lacity.org/http%3A/preservation.lacity.org/neighborhoodconservation/updates [stating "On June 30, 2016, the Department of City Planning released the Initial Study/Negative Declaration (IS/ND) for the Baseline Mansionization Ordinance and Baseline Hillside Ordinance Code amendment."]) Therefore, because the Planning Commission did not wait until the close of the public comment period on the ND, it action adopting the ND is void and must be revisited.

Futhermore, in addition to violating CEQA, the City violated its own "Public Participation Policy" by failing to obtain meaningful input from affected Neighborhood Councils or community groups. This policy incorporates best practices for the City's proposal of major changes such as the exemption of institutional and CUP uses from the BMO/BHO. As the "Public Participation Policy" was described in 2011, it stated

The new policy recognizes that adequate time is essential for Neighborhood Councils, community-based organizations, and other affected groups to provide

> *meaningful feedback on draft plans and ordinances*. Accordingly, the public now has 60 days to review preliminary reports before the City Planning Commission (CPC) meets. During that time, staff will conduct a public hearing and consider all comments before preparing a final recommendation report for review and action.

(http://cityplanning.lacity.org/Reorganization/BluePrintUpdate2011Final.pdf, emphasis added.) The City should not violate this policy in order to make drastic changes to the BMO/BHO for institutional or CUP uses without adequate time for review and comment from the public.

C. The Proposed Exemption of Institutional or CUP Uses From the BMO/BHO is Poorly Written and Not Described.

In this case, the project description in the negative declaration for the proposed ordinance includes no reference to exempting institutional or other CUP uses from the BMO/BHO. There is no description of the potential effects of such an exemption.

It is unclear what "other institutional uses" the staff report refers to as it argues "BMO and BHO regulations . . . are not necessarily appropriate to regulate schools, houses of worship, and other institutional uses." (Staff Report, Appendix B, p. B-1.) The term "institution" is not defined in section 12.03 of the Municipal Code. Under the Municipal Code, the following are likely also to be considered "institutional uses" in addition to schools and houses of worship: "Correctional or penal institutions. . . Educational institutions. . . Hospitals or sanitariums."(See LAMC section 12.24.U.5, .6, and .12.)

No actual proposed language of the change that would be made to the Municipal Code pursuant to the recommendation in Appendix B is set forth- so there is no way to know if the change would be made to section 12.03, 12.24, or some other section. The recommendation in Appendix B refers to modifying the ordinance "to explicitly exempt *CUP projects* from the BMO and BHO provisions." (Appendix B, p. B-1, emphasis added.) This encompasses far more than just institutional uses, as "CUP projects" could also include stadiums, arenas, auditoriums, airports, motion picture studios. (See LAMC section 12.24.T.3.b.)

D. The Proposed Institutional Use/CUP Exemption from the BMO/BHO Is Completely At Odds With the Original Intent of the Proposed Ordinance.

The newly inserted proposed exemption for institutional uses would be completely at odds with the spirit and intent of the proposed BMO/BHO change ordinance that has been under review for many months, with public hearings as long ago as December 2015.

Councilmember Ryu and Councilmember Koretz requested in their original motion that the BMO and BHO be tightened up and made more efficient. Neither of them requested the exemption of institutional and CUP uses from the BMO/BHO. In fact, we have been informed that at the City Planning Commission hearing of July 14, 2016, the deputy of Councilmember Ryu opposed the proposed change.

Overall, the proposed BMO/BHO change ordinance appears to be an effort to tighten restrictions and close loopholes. As the BMO/BHO fact sheet posted on the Planning Department's website states, other portions of the proposed changes would eliminate floor area exemptions for the first 100 square feet of overheight structures and eliminate floor area exemptions for covered porches and patios. These types of cleanup changes are minor and promote more restrictive development controls. However, the proposed change to exempt institutional uses from BMO/BHO restrictions altogether is a radical change and would create extensive challenges for both City staff and the affected communities in attempting to control development of institutional uses in residential areas.

We join in the objections of Brentwood Residents Coalition date July 14, 2016, the Law Office of John P. Given dated July 14, 2016, the objections of the Federation of Hillside and Canyon Associations made on July 14, 2016, and other similar objections to the proposed exemption of institutional uses from the BMO and BHO.

We request to receive any future notice regarding the BMO/BHO ordinance amendments pursuant to Public Resources Code section 21092.2.

Thank you for your consideration of our comments.

Sincerely,

Douglas P. Carstens

Enclosure:

1. Page B-1 of Staff Recommendation Report, Appendix B.
2. Analysis of Sandra Genis
3. Resume of Sandra Genis

Cc:
Darlene Navarette, *darlene.navarrete@lacity.org*

ENCLOSURE 1

Appendix B: Staff Recommended Changes to April 21, 2016 Ordinance

No.	Issue or Comment	Discussion	Staff Recommendation
General			
1	Explicitly exempt institutions from BMO and BHO provisions. If not feasible, allow entitlement cases to become vested once the application is deemed complete.	BMO and BHO regulations meant to limit the scale, bulk, and grading impacts of single-family homes are not necessarily appropriate to regulate schools, houses of worship and other institutional uses. Since a conditional use permit (CUP) is required for these use in residential zones, and the RFA limitations and other development standards could be overridden if appropriate, the requested change is not necessary, but may be desirable for clarity.	Modify the ordinance to explicitly exempt CUP projects from the BMO and BHO provisions.
2	Exempt properties within the Sunset Doheny HOA, Doheny Estates, Trousdale Association, because these properties are subject to CC&Rs that only allow single-story structures.	Creating specific geographic exemptions from the BMO and BHO is outside the scope of the direction received from the City Council. More tailored zones will be available through *re:code LA*.	No change.
Building Envelope			
3	Protect neighbors from stepped back upper stories that become "party decks".	Multiple public complaints about privacy have been received about upper-story decks, terraces or balconies built at or near the minimum side yard setback and overlooking adjoining properties.	Modify the ordinance to require decks, balconies, and terraces to be set back a minimum of 3 feet from the minimum required side yard.
4	Raise starting height for encroachment plane to accommodate higher ceilings, raised foundations and narrow/substandard lots.	Staff reviewed analysis and modeling of encroachment plane heights ranging from 20 to 22 feet. A 20-foot plane height can accommodate two standard-height (8.5 feet) stories, with floor/roof structures and foundation included, at the minimum side yard. If desired, higher floor-to-ceiling heights can be accommodated by shifting the side wall farther into the site.	No change.

ENCLOSURE 2

SANDRA GENIS, PLANNING RESOURCES
1586 MYRTLEWOOD COSTA MESA, CA. 92626 PHONE/FAX (714) 754-0814

To: Doug Carstens

From: Sandra Genis

Date: July 20, 2016

Subject: ND for the the Baseline Mansionization Ordinance and Baseline Hillside Ordinance (Case No. CPC-2015-3484-CA) (ENV-2015-4197-ND)

The Negative Declaration/Initial Study (ND) ENV-2015-4197-ND was prepared in order to address the potential environmental effects of the proposed revisions to the Baseline Mansionization Ordinance (BMO) and Baseline Hillside Ordinance (BHO) (Case No. CPC-2015-3484-CA) (ENV-2015-4197-ND). The ND is attached to the July 14 staff report for the ordinance revisions.

The Process

In accordance with Section 21080(d) of the California Environmental Quality Act:

> If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

Section 21080(e) defines "substantial evidence" as follows:

> (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or [emphasis added] expert opinion supported by fact.
>
> (2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

As stated in *Citizens for Responsible & Open Government v. City of Grand Terrace*, (2008) 160 Cal. App. 4th 1323:

> CEQA provides that generally the governmental agency must prepare an EIR on any project that may have a significant impact on the environment.

(§§ 21080, subd. (d), 21100, subd. (a), 21151, subd. (a); *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 570–571 [80 Cal. Rptr. 2d 294], quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601–1602 [35 Cal. Rptr. 2d 470].) Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. (§ 21080, subd. (c)(1); Guidelines, § 15070, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399 [43 Cal. Rptr. 2d 170]; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 [21 Cal. Rptr. 3d 791] (*Pocket Protectors*).) "The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR...

A mitigated negative declaration is one in which "(1) the proposed conditions 'avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and* (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.' (§ 21064.5, italics added.)" (*Architectural Heritage Assn. v. County of Monterey, supra*, at p. 1119; see also *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1167 [44 Cal. Rptr. 2d 288].)

As stated in *Pocket Protectors, v. City of Sacramento* (2004) 124 Cal. App. 4th 903:

Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: "if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil[, supra,]* 13 Cal.3d 68)." Thus, as *Claremont* itself recognized, "Consideration is not to be given contrary evidence supporting the preparation of a negative declaration. (*City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229, 244–245 [227 Cal. Rptr. 899]; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988 [165 Cal. Rptr. 514]." (*Claremont, supra*, 37 Cal.App.4th at p. 1168.)

It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project. (See *No Oil, supra*, 13 Cal.3d at p. 85.)

Adoption of a Mitigated Negative Declaration is inappropriate in this case inasmuch as the clear potential for significant adverse impacts on the environment exists under the July 14, 2016 staff recommendation. These are most significant, but not limited to, impacts on visual factors.

The Project

The Table of Contents for the ND lists the following three appendices to the ND:

- Appendix A City of LA Community Plan Areas Zoning Maps
- Appendix B Citywide Proposed Municipal Code Amendment Baseline Mansionization and Baseline Hillside Zoning Code Amendment
- Appendix C LAMC Section 12.21C(10)

However, the three appendices are not attached to the ND included in the July 14, 2016 staff report.

Appendix B is critical, because the July 14, 2016 staff report lists a number of staff recommended changes from the ordinance which was released in April 2016 (Appendix B). Among those changes is a recommendation that the ordinance be modified to explicitly exempt CUP projects from the BMO and BHO provisions (p. B-1). This could have significant effects on the neighborhoods the ordinances are intended to protect.

Among the uses which are permitted in residential districts upon approval of a use permit by the Planning Commission are auditoriums, stadiums, and arenas; correctional or penal institutions; educational institutions; electric power generating sites, plants or stations; golf course and facilities; hospitals or sanitariums; land reclamation projects; and motion picture and television studios (LAMC Sec. 12.24.U) Among uses which are permitted in single family residential districts upon approval of a use permit by the Zoning Administrator are churches; columbariums, crematories, or mausoleums; drive-in theaters; fraternity or sorority houses; miniature golf; and private clubs (LAMC Sec. 12.24.W). If the recommended exemption were approved, all of these uses could potentially be exempt from massing and grading limitations in the BMO and BHO ordinances.

Appendix B is essential in order to determine precisely what the ND is intended to address. Although attached to the July 14, 2016 staff report and apparently published June 30, 2016, the ND is signed and post-dated July 20, 2016, which might imply that it was intended to address staff recommended changes to the April 2016 version of the ordinance.

At the same time, the project description in the Initial Study (pp. II-1 through II-11; p. III-1 through III-4) does not reflect the CUP exemption. In any case, the analyses in the ND are not adequate to address potential impacts due to the CUP exemption as discussed below..

Project Impacts

Aesthetics

As noted on Page II-1 of the ND:

> In 2006, the City of Los Angeles Department of City Planning (DCP) began drafting regulations to address the proliferation of development perceived to be out-of-scale with existing single family zoned neighborhoods and to address extensive grading in single-family zones in the "Hillside Area." Regulations were developed for the flatlands under the Baseline Mansionization Ordinance (BMO) and regulations for designated "Hillside Areas" under the Baseline Hillside Ordinance (BHO). The City Council adopted the BMO in 2008 and the BHO in 2011 as a way to address the concerns of perceived out-of-scale development and extensive hillside grading.

Page II-3 continues:

> ...the proposed Project would provide an immediate response to the perceived out-of-scale development that continues to occur in single-family neighborhoods.
>
> ...
>
> The proposed Project would amend the existing BMO/BHO to create regulations that address the out-of-scale form and size of additions and new construction within the single family zones.

Findings for approval of the proposed ordinance amendments (Appendix C) indicate that:

> The proposed ordinance ... is necessary in order to preserve and maintain the character and scale of existing single-family neighborhoods and ensure that future development is more compatible. [Finding 1, p.1]...
>
> ...The proposed ordinance ... substantially advance a legitimate public interest in that it will further protect single-family residential neighborhoods from out-of-scale development ... Good zoning practice requires new development standards for single-family residential zones to further maintain and control the preservation of neighborhood character. This proposed ordinance accomplishes this requirement. [Finding 2, p.2]

Thus, the proposed project is designed to prevent out-of-scale development . To permit development to exceed existing or proposed limits in the BMO and BHO ordinances simply because the project is subject to CUP approval will perpetuate and exacerbate issues with out-of-scale development. As noted further in Finding 2:

> Delaying the implementation of these code amendments could result in the continuation of over-sized development of single-family residential neighborhoods which is

inconsistent with the objectives of the General Plan and **would create an irreversible negative impact** on the quality of life in the communities within the City.

The previously proposed ordinances would have avoided the "irreversible negative impact". As stated in the ND (p. IV-2):

> Development (e.g., additions and/or new construction) of single-family zoned properties that occurs pursuant to the proposed Project **would be required to abide by the provisions included in the Code amendment and all applicable regulations** included in the applicable Community Plan, Specific Plan, CDO, and the LAMC Chapter 1, Planning and Zoning Code, that address preservation of publicly available scenic vistas. Therefore, the proposed Project would not block or otherwise impede an existing public view of a scenic vista.

Under the proposed exemption, CUP projects *would not* be "required to abide by the provisions included in the Code amendment and all applicable regulations". Such projects would be exempt and therefore potentially *would* "block or otherwise impede an existing public view of a scenic vista."

Similarly, when addressing impacts on scenic highways, the ND concludes (p. IV-2)

> While development of single-family lots may occur adjacent to an existing scenic highway (i.e., Arroyo Seco Historic Parkway) such development would not be out of scale or character with the surrounding area (as is the purpose of this project). As such, the proposed Project would not damage a scenic resource in a state scenic highway

However, the exemption for CUP projects could result in development which is out-of-scale and character with the surrounding area. Due to the economic pressures addressed in Finding 1, it is highly likely that CUP projects will be over-sized. The proposed exemption for CUP projects will likely degrade the visual quality of a CUP project area and its surroundings, by creating abrupt changes of scale from the surrounding neighborhood.

The exempt, CUP structures will impair the flow of light and air and result in shade and shadow affecting surrounding residences due to the additional mass permitted. The larger structures will be more likely to create glare into the surrounding area as well.

The exemption for CUP projects is likely to result in negative impacts due to landform alteration as described in Finding 1:

> With regard to the BHO, currently there are no limits to the quantity of grading from beneath the footprint of the structure. **This has resulted in major alterations of the City's natural terrain, the loss of natural on-site drainage courses, increased drainage impacts to the community, off-site impacts, and increased loads on under-improved hillside streets during construction.**

The increased alteration of the natural terrain due to the CUP project exemption will affect the visual quality of the community's hillsides and canyons.

Air Quality

An exemption from the BHO will potentially result in increased grading with associated air emissions due to both on-site equipment and hauling of cut and/or fill materials. This would most affect those residing close to the grading site.

Greenhouse Gases

The ND indicates there will be no increase in greenhouse gas emissions due to energy use (p. IV-31):

> As the proposed Project would ensure the additions and new construction would not be substantially larger than the existing homes, any increase in energy use for heating/cooling would be minimal.

The proposed exemption for CUP projects eliminates the assurance that new construction would not be substantially larger than existing development. Thus it is likely that an increase in energy use for heating/cooling would be more than "minimal".

Hydrology

As noted above in Finding 1, the lack of limits on grading "has resulted in major alterations of the City's natural terrain, the loss of natural on-site drainage courses, increased drainage impacts to the community, off-site impacts..." As originally proposed, the ordinances would have reduced or eliminated this impact. However, the proposed CUP exemption would result in the loss of natural drainage course and increased drainage impacts noted in Finding 1.

Land Use

As noted in Finding 1, the BMO and BHO ordinance amendments are needed to implement the following provision of the Land Use Element of the General Plan:

> Goal 3B Preservation of the City's stable single-family residential neighborhoods.
>
> Objective 3.5 Ensure that the character and scale of stable single-family residential neighborhoods is maintained, allowing for infill development provided that it is compatible with and maintains the scale and character of existing development.
>
> Policy 3.5.2 Require that new development in single-family neighborhoods maintains its predominant and distinguishing characteristics such as property setbacks and building scale.

Policy 3.5.4 Require new development in special use neighborhoods such as water-oriented, rural/agricultural, and equestrian communities to maintain their predominant and distinguishing characteristics.

The proposed exemption for CUP projects would impede achievement and implementation of these provision by allowing large, out-of-scale structures and would compromise the character of established neighborhoods, as stated in Finding 1.

Traffic/Circulation

Finding 1 notes "increased loads on under-improved hillside streets during construction." Due to the lack of grading and construction limits addressed by the proposed ordinances, the exemption for CP projects would perpetuate and exacerbate this problem.

Conclusion

Based on the above, it cannot be assured that no significant adverse impacts will occur as a result of the proposed exemption for CUP projects from the BMO and BHO. On the contrary, it is likely that impacts can and will occur. By the City's own admission in its findings, failure to adopt and implement the limitations on massing and grading in the proposed BMO/BHO "would create an irreversible negative impact on the quality of life in the communities within the City" (Finding 2). Thus, the proposed ND should not be adopted.

ENCLOSURE 3

SANDRA L. GENIS

BIOGRAPHICAL SUMMARY

Sandra Genis is a planning consultant with over thirty years of experience in public and private sector planning. Her firm, Sandra Genis, Planning Resources, provides consultant assistance in land planning and environmental investigations, including review and analysis of environmental documents in situations where litigation is a potential. Prior to establishing the firm, Ms.Genis was employed by private consulting firms and the City of Newport Beach Planning Department.

Ms. Genis was first elected to the Costa Mesa City Council in 1988 and 1992, serving as mayor from 1992 through 1994. After a sixteen-year break, Ms. Genis returned to the Council in 2012. She served on the Orange County Charter Commission and was a member of the Orange County League of Cities Supercommittee on Restructuring, for which she presided as chairman of the Charter Subcommittee.

Sandra Genis was a member of the Southern California Association of Governments Regional Council where she sat on the Community, Economic, and Housing Development Committee, Planning Committee, the Alternative Dispute Resolution Advisory Committee, and the Legislative Task Force. She currently serves on SCAG's Committee on Energy and the Environment. Her other activities include:

Southern California Special Commission on Air Quality and the Economy
Orange County Regional Advisory and Planning Council
Orange County Housing Commission
Orange County Affordable Housing Task Force
Orange County Single Room Occupancy Housing Task Force

Ms. Genis has been involved with a numerous non-profit organizations, including the boards of the Orange County Fairgrounds Preservation Society, Bolsa Chica Land Trust, Orange County Friends of Harbors Beaches and Parks, and Costa Mesa Library Foundation.

Sandra Genis is a graduate of Stanford University.