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August 25, 2014

VIA HAND DELIVERY

The Board of Building and Safety Commissioners
City of Los Angeles
201 North Figueroa, Room 1080
Los Angeles, CA 90012

Re: 10697 and 10699 West Somma Way, Bel Air
Board File Number: 140029
Project Title: ENV-2014-197-MND
Applicant: Shannon Nonn
Owner: WPG 10697 Somma Way LLC
CONTINUED HEARING: August 26, 2014

Dear Commissioners Ambatielos, Brannon and Hovaguimian:

This law firm represents the Bel Air Homeowners Alliance (the "Alliance"), a California public benefit corporation. The Alliance advocates for sensible development in the Bel Air community that properly considers the health and welfare of the existing residents. Its officers and supporters all reside in the Bel Air community, and have been adversely impacted by the City's recent approval of hotel-sized construction projects in the Bel Air hills, masquerading as "single family homes," ranging in size from 20,000 to 96,000 plus square feet. *See* Exhibit A, Hayward D. Fisk ("Fisk") Decl., ¶ 2; and representative satellite photos at Exhibit V hereto. Many of these hillside construction projects require export of many thousands of cubic yards of dirt, on many thousands of large trucks, pursuant to City approved haul route permits. *See* Exhibit B, Maureen Levinson ("Levinson") Decl., and two videos of hauling truck impacts in the Bel Air community, Exhibits B and D thereto.

The latest example, of the continued abuse of the Bel Air community's existing residents, is the proposed 40,000 square foot "single-family home," on two lots, at 10697 and 10699 West Somma Way (the "Somma Way Project"), that will replace an existing 3,799 square foot single family home. That disparity in size is a perfect example of how this City has sent the message that speculators can turn truly single family homes into huge hotel-sized commercial investment properties, owned by corporations, as is the case here. Thus, this is not about individual families building their dream home in Bel Air, and their property rights to do so. It is rather about large

investment groups funding the obliteration of the Bel Air community, frequently for foreign buyers who can pay for \$50 million to \$100 million dollar construction projects on top of Bel Air hills. See Exhibit V satellite photos.

The Board's "business as usual" approach to issuing haul route permits for these mega sized "homes," effectively exporting the hillsides of Bel Air, must end, and the Alliance is determined that it end now, on this Somma Way Project. The fiction that these hotel-sized buildings are harmless "single family homes," which can be approved one at a time with no significant adverse impacts, will no longer withstand public scrutiny. Henceforth, all hotel-sized projects, masquerading as "single family homes," will be challenged by the Alliance, before this Board, the City Council and the courts if necessary, until the City imposes sensible land use controls that reflect some reasonable consideration for the health, safety and welfare of the existing Bel Air community, especially taking into account the cumulative impacts of so many large ongoing construction projects within the Bel Air hills.

This Board can take a constructive step toward a better future for the Bel Air community by denying the proposed Somma Way Project haul route permit, and freezing all other haul route permits, for at least 120 days, to allow the City the necessary time to develop a sensible set of land use controls, similar to those that exist now in Beverly Hills, including limiting the total volume of dirt that can be imported or exported from any home construction site, in the Hillside Area, to 3,000 cubic yards, in any five year period. See Beverly Hills City Code Article 25.5, section 10-3-2521 (Landform Alteration).

I. Executive Summary.

The Alliance submits this public comment letter in opposition to the issuance of any entitlements or permits for the Somma Way Project, including the Board of Building and Safety Commissioners' issuance of the proposed haul route permit for the export of 29,474 cubic yards of dirt from the Somma Way Project site. The Alliance bases its opposition on the City's unlawful reliance upon a Mitigated Negative Declaration ("MND") (attached hereto as Exhibit C), for this hotel-sized project, which will cause many significant adverse impacts to the Bel Air community, on both a project specific impact and cumulative impact basis, including:

- (1) Fire Emergency Access/Evacuation Impacts;
- (2) Truck Traffic Impacts;
- (3) Air Quality Impacts; and
- (4) Noise/Vibration Impacts.

Fair arguments with respect to each of these adverse impacts, supported by "substantial evidence" (including several expert opinion reports), requires preparation of an Environmental

Impact Report (EIR) studying, disclosing and mitigating such project specific and cumulative impacts, to a less than significant level, wherever feasible to do so.

This comment letter also sets forth, in Section IV, several procedural violations of CEQA, requiring that the City's MND not be approved, including the misleading project description; the deferral of mitigation measures to future study or formulation by the Applicant; a failure to analyze and disclose cumulative impacts upon traffic, air quality; fire emergency access/evacuation; the omission of any Greenhouse Gas analysis from the MND and Initial Study; the omission of an energy use and waste analysis; and mitigation regarding impacts to protected Coast Live Oak trees.

Finally, the City's unlimited and concurrent approval of so many haul route permits for large hotel-sized projects throughout the hills of the Bel Air community, also violates the letter and spirit of the City's planning and zoning requirements, including the requirements for planning consistency, sensible hillside development, traffic safety and the statutory command that this Board "shall" deny a haul route permit where the record contains evidence that granting the permit will "endanger the public health, safety, and welfare." See City Municipal Ordinance § 91.7006.7.4 (5).

II. Standard of Decision.

A. The Fair Argument Test.

The State Legislature adopted the California Environmental Quality Act (CEQA), *California Public Resources Code* sections 21000 *et. seq.*, to ensure that public agencies disclose the environmental consequences of their decisions, and to require mitigation of adverse environmental impacts. See *Cal. Public Resources Code* ("PRC") §§ 21000-21006; and 14 *Cal. Admin. Code* § 15003(a)-(e). The Environmental Impact Report ("EIR") is the "heart of CEQA" for the purpose of disclosing environmental impacts and imposing mitigation. See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 186-187.

CEQA incorporates "a strong presumption in favor of requiring EIRs," rather than Mitigated Negative Declarations. See *Kostka & Zischke, Practice Under CEQA* (2012), § 6.37, pp. 340-341, citing *No Oil Inc. v. City of Los Angeles* (1974) 12 Cal.3d 68, 75 and 82; and *Friends of "B" Street v. City of Haywood* (1980) 106 Cal.App.3d 988, 1002.

That strong presumption is based upon an easily understood legal standard, that this Board is legally required to apply, specifically that:

An EIR is required by state law, *Public Resources Code* section 21082.2(d) and 14 *Cal. Admin. Code* section 15064(f)(1), whenever the record before the public agency contains "fair arguments," supported by "substantial evidence," that the proposed project may cause a significant adverse impact.

CEQA defines “substantial evidence” as:

- Facts;
- Reasonable assumptions predicated upon facts; and
- Expert opinions supported by facts.

See *PRC* § 21080(e), 21082.2(c); 14 *Cal. Admin. Code* §§ 15064(f) (5) and 15384.

As set forth below, and in the attached exhibits to this letter, the Alliance has presented a wealth of “substantial evidence,” including several expert opinions, concerning impacts upon fire emergency access and evacuation during hillside wildfires and other emergencies, air quality, and traffic congestion and accurate geotechnical analysis of the total volume of dirt to be exported from the Somma Way Project site. The Alliance has also provided sworn declarations under penalty of perjury from Bel Air residents; evidence of the Applicant’s admissions against interest at a Community Meeting hosted by the Applicant and attended by City Staff, on August 13, 2014; evidence of many residents’ personal non-technical observations about cumulative noise, vibration, dust and traffic safety impacts, and admissions by the City in its own MND Initial Study.

California courts have repeatedly held that such evidence is “substantial evidence,” as a matter of law. See e.g., *Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370 and *Architectural Heritage Ass’n v. County of Monterey* (2004) 122 Cal.App.4th 1095 (expert opinion evidence constituted “substantial evidence”); *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872 (residents’ personal observations about existing noise impacts constituted “substantial evidence”); and *Citizens Ass’n for Sensible Development v. County of Inyo* (1985) 172 Cal.App.3d 151, 173 (neighbors written comments about existing traffic conditions constituted “substantial evidence” in support of their “fair argument”). Admissions in a City’s MND Initial Study can also be relied upon by a project opponent as “substantial evidence” in support of a “fair argument,” that the project may cause significant impacts. See *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1184 (Initial study comments supported opponent’s fair argument, requiring an EIR).

Critically, with regard to expert opinion evidence, this Board should note well, that:

“Opinion evidence submitted by a qualified expert, showing that significant impacts may occur, is usually conclusive [that an EIR must be prepared].”

See *City of Livermore v. LAFCO* (1986) 184 Cal.App.3d 531, 541; and Kostka & Zischke, *Practice Under CEQA*, § 6.41, p. 347. Here, in this letter and in its attached expert opinion exhibits, that “conclusive presumption” is established several times over. Any one of the expert opinions attached hereto as Exhibits D (geotechnical), G (emergency fire access/evacuation), H (the same re emergency fire evacuation), J (truck congestion), and N (air quality impacts),

supporting a fair argument in this comment letter, mandates that the MND be rejected, and that an EIR be prepared and circulated to the public.

Furthermore, under the strong legal presumption favoring EIRs, there is “no weighing of conflicting evidence” by this Board. *See e.g.*, 14 *Cal. Admin. Code* § 15064(g), stating: “If there is disagreement among expert opinion supported by the facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.” The courts have construed this legal standard as follows:

“When qualified experts present conflicting [opinion] evidence on the nature or extent of a project’s impacts, the agency must accept the evidence tending to show that the impact might occur. Evidence to the contrary is usually irrelevant, because the agency cannot weight competing evidence.” (emphasis supplied)

See Kostka & Zischke, *Practice Under CEQA*, § 6.41, pp. 347-348, citing *Carmel-By-The-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249; *Brentwood Ass’n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504; and *Friends of “B” Street v. City of Hayward*, *supra*. Thus, any contrary expert opinion evidence offered in rebuttal by the Applicant or City Staff, if any, is irrelevant to the legal standard governing this Board’s attempted reliance upon an MND, rather than an EIR.

Finally, a public agency may not, as a matter of state law, choose to dispense with an EIR because a project causing one adverse impact may be beneficial with respect to other impacts. *See* 14 *Cal. Admin Code* § 15063(b)(1); and *County Sanitation Dis. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580. So, here, it is entirely irrelevant that the applicant and City Staff claim this 40,000 square foot “house” project is the only means of remediating an existing landslide on the site, as claimed at the recent August 13, 2014 Community Meeting hosted by the Applicant and City Department of Building and Safety Staff (Mr. Jeff Napier). The existence of other adverse impacts requires preparation of an EIR as a matter of state law, even if this rather preposterous landslide rationale were actually true, which it is not. *See* expert opinion from Leighton & Associates, Exhibit D, p. 2, concluding that there are other means of stabilizing the landslide on the Somma Way Project site, other than exporting the entire hillside to build the proposed 40,000 square foot house. Thus, the Applicant and City Staff’s rationalization for proceeding with the project, despite its potentially adverse impacts, does not withstand scrutiny, because in truth the entire hillside must only be removed if the 40,000 square foot house is being built, with 270 large cement soldier piles, to comply with the City’s geotechnical requirements for building the Somma Way Project.

B. Definition of “Significant Impact.”

With regard to potentially “significant” impacts, significant need not be important. Rather, it can mean “not trivial.” *See No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83. Furthermore, a significant adverse impact need not be long term or permanent. *See* Kostka &

Zischke, *Practice Under CEQA*, §§ 6.44, p. 354, citing *Running Fence v. Superior Court* (1975) 51 Cal.App.3d 400, 416. Consequently, “short term” impacts, for example temporary construction-related impacts, can be “fairly argued” to be “significant impacts,” requiring preparation of an EIR. *See No Oil, Inc., supra*, 13 Cal.3d at p. 85. Of course, here, where so-called “single family homes,” such as the 40,000 square foot Somma Way Project, take years to build, there is nothing “short term” about the impacts caused by many thousands of truck trips, here more than 6,000 trips for dirt hauling alone, not including dirt export for the Project’s 270 cement soldier piles (requiring another 4,000 undisclosed haul truck trips), and other non-haul truck traffic, such as cement trucks and lumber/steel delivery trucks. *See Exhibit D*, Leighton & Associates expert opinion letter; and Exhibit A, Fisk Decl., ¶¶ 6-7, and Exhibit E, Daniel Love (“Love”) Decl., ¶¶ 14-15.

C. Cumulative Impacts.

This Board of Building and Safety Commissioners has recently approved a multitude of huge hotel-sized projects, throughout the relatively small community of Bel Air. *See Exhibit E* hereto, Love Decl., ¶¶ 6-10, and Exhibit A thereto, Bel Air Cumulative Haul Route Matrix. *See also Exhibit V*, satellite photos of current hilltop hotel-sized construction sites in the Bel Air hills. The Alliance knows from extensive efforts to survey any pre-construction activity, such as demolition of existing homes on a lot or merging existing lots, that more approvals for large hotel-sized buildings will soon be filed and pending before the various City boards and commissions, including the massive building site at Tortuoso Way, combined lots A, B and C, that will use the same Stone Canyon Road, as the Somma Way Project, for its construction-related trucks (estimated at approximately 10,000 total truck trips just to export the required cubic yards of dirt). Yet, the City makes no effort whatsoever, to analyze the cumulative impacts of so many concurrent large scale construction projects using the same narrow haul routes through the Bel Air community. *See Exhibit E*, Love Decl., ¶¶ 6-10; and Meyer Decl., ¶¶ 6-10.

CEQA provides that:

“... [T]he environmental impacts of other projects are relevant to the extent that they provide context for assessing the impacts of the project under review....”

See 14 Cal. Admin Code § 15065(a)(1); and Kostka & Zischke, Practice Under CEQA, § 6.49, p. 356.

To that end, “[a] lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project’s potential environmental impacts although individually limited, are cumulatively considerable.” *See Public Resources Code § 21083(b)(2); and 14 Cal. Admin. Code § 15064(h)(1) and 15065(a)(3)*. “Cumulatively considerable means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects and probable future projects.” *See PRC § 21083(b)(2), and 14 Admin. Code §15064(h)(1), and §15065(a)(3)*.

Furthermore, a public agency's failure to adequately study, explain and disclose cumulative adverse impacts from other past, current and probable future projects may, in and of itself, support a court's order voiding an approved MND, and ordering preparation of an EIR. See *San Bernardino Valley Audubon Society v. Metro Water Dist.* (1999) 71 Cal.App.4th 382, 398; and *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 (MND found invalid where public agency failed to adequately investigate and disclose potential impacts in MND Initial Study). Here, the City's cavalier disregard of its legal obligation to study and disclose the cumulative impacts of approved haul route permits, for numerous commercial hotel-sized buildings in the Bel Air community, prohibits the use of an MND for the Somma Way Project, and requires preparation of an EIR. See Exhibit E, Love Decl., ¶¶ 6-10, and Exhibit A thereto, Bel Air Cumulative Haul Route Matrix; and Exhibit F, Jamie Meyer Decl., ¶¶ 6-10, and Exhibits A and B thereto; Matrix of Bel Air Cumulative Construction Projects and corresponding map of project locations.

The Somma Way Project may not be the biggest snow flake to finally collapse the roof, but it is the latest, and it along with all of the other large scale construction projects must be analyzed by this City, in reference to each other, not as one off "single family homes." Only by doing so can the City comply with CEQA's command that cumulative impacts be considered in determining whether an EIR is required. See *PRC* § 21083(b)(2).

III. The Record Here Requires An EIR, Not An MND, Because Several Fair Arguments Exist, That Are Supported By Substantial Evidence.

A. The Project May Cause Significant Fire Emergency Evacuation Impacts.

The Project exacerbates an already severe fire safety hazard in the Bel Air hills, by interfering with access by fire trucks, impeding evacuation of existing residents in a wildfire emergency and by placing far more people (residents, employees, staff, guests and others) in very large hotel-sized properties, where comparatively modest sized single-family homes (averaging 4,000 to 5,000 square feet), with fewer people, existed previously. For example here, the Project replaces a 3,799 square foot home with a 40,000 square foot home, capable of housing far more residents and requiring far more staff.

The cumulative effect of so many mega-sized "homes," inserting many thousands of construction-related trucks, and thousands of additional residents and workers, creates a much greater fire safety hazard, in the Bel Air hills. Substantial evidence supporting this fair argument consists of the following:

- (1) The expert opinions of two retired Fire Marshals, for Los Angeles and Ventura Counties, specializing in neighborhood emergency fire department access and resident evacuation. Both experts conclude that the Somma Way Project construction-related truck trips will significantly worsen an already very dangerous condition in the Bel Air community, as well as substantially increasing the total population to be evacuated in the event of a wild fire on

the Bel Air hillsides. *See* Expert opinion letter of Scott Franklin, attached hereto as Exhibit G, and the Expert Opinion of Kevin Nestor (submitted as a concerned citizen, not a paid expert), attached hereto as Exhibit H;

- (2) The City's MND Initial Study includes significant admissions regarding the potential fire hazard, caused by expanding truck trips on Bel Air's narrow roads. *See* Exhibit C, MND Initial Study, p. 26, section VIII(h), which states: "The project is located within a Very High Fire Hazard Severity Zone. As such, the project may expose people and structures to significant risk of loss, injury or death involving wild land fires." The MND Initial Study, § XVI(e), p. 30, further states: "During grading and construction activities, access through Somma Way, Stone Canyon Road, and other streets included in the haul route may temporarily impair emergency access." Finally, MND Initial Study, § XIV(a), p. 29, states: [The two nearest fire stations] exceed the maximum response distance (City of Los Angeles CEQA Threshold Summary, 2006)...";
- (3) The documentary film showing the 1960's Bel Air Hills fire, which destroyed hundreds of homes. *See* <https://www.youtube.com/watch?v=2lvhXWQ7Sr4>, to review the documentary film. (We are unable to download and attach the video as an exhibit to this letter, so we invite the Board to visit the above YouTube link to review film of the infamous 1960's Bel Air fire.)
- (4) The sworn declarations of Bel Air residents attesting to the road blockages that regularly occur now on Bel Air's narrow roads, due to construction-related traffic, including the Somma Way Project's haul route on Stone Canyon Road. *See* Exhibit A, Fisk Decl., ¶¶ 3-4; Exhibit I, James Hyman ("Hyman") Decl., ¶ 10, and Exhibit B, Levinson Declaration film exhibits attached thereto as Exhibits B and D, showing never ending instances of narrow roads being blocked by large construction related trucks.

This "fair argument," concerning an increased risk of a fire emergency evacuation disaster, jeopardizing the lives of thousands of residents, guests, and workers, is supported by the conclusive "substantial evidence" attached hereto in Exhibits G and H; the City's own MND Initial Study admissions of a potentially serious hazardous condition (Exhibit C, pp. 26, 29 and 30), and in the sworn declarations of Bel Air residents, adversely effected by current construction related truck traffic. *See* Exhibits A, B, E, F and I). As such, the Alliance has presented a "fair argument," supported by "substantial evidence," barring approval of the MND by this Board, and requiring preparation of an EIR.

CEQA expressly commands this Board to order preparation of an EIR whenever a project, and/or a project plus other projects, may cause a direct or even indirect adverse effects upon human health. *See e.g.* 14 *Cal Admin Code* §§15065(a)(4) (mandatory finding of significance for potentially substantial adverse impacts upon human beings). One would hope

that an increased risk of death or serious injury, to thousands of people in a Bel Air wildfire (including both residents and firefighters), would be viewed as “a substantial adverse effect upon human beings” by this Board, and immediate action taken to stop and reverse the serious hazard that currently exists. Now that this Board possesses the attached expert opinions from two respected Fire Marshals, after the fact regrets for the loss of life, in a Bel Air wildfire conflagration, will not excuse a failure to act now, by this Board and the City Council.

Moreover, throwing a few more flagmen at the many thousands of truck trips added to Bel Air’s narrow roads is not a serious response by the City’s Department of Building and Safety. See RK Engineering expert report, Exhibit, J, pp. 8-10, explaining that the total volume of trucks added to Bel Air streets, not tinkering with the number of flagmen or better staggering of truck trips, is the problem. Limiting that total volume, at any one time, is the only solution, as recognized by the City of Beverly Hills in adopting a limit on total dirt export from any home site, in the Hillside Area, to 3,000 cubic yards. See Beverly Hills City Code, Article 25.5, section 10-3-2521 (Landform Alteration). Neither this Board nor the City Council, have imposed any limits whatsoever, and thus the “madness” on Bel Air’s streets continues, and worsens day by day, as more hotel-sized buildings are approved by this City.

B. The Project Will Cause Significant Truck Traffic Congestion Impacts.

The Alliance has repeatedly expressed its concern that the City has not conducted a cumulative impact analysis for all existing and proposed truck trips authorized by haul route permits, and/or building permits, for the hotel-sized homes being built in the Bel Air community. Furthermore, the City has declined to timely respond to written requests for any information the City maintains regarding cumulative construction truck trips in the Bel Air community. See Exhibit K hereto, which is a collection of the Alliances letters and Public Record Act Requests, repeatedly requesting such information. Having no cooperation from the City, because it has no such information or declines to disclose it, the Alliance retained RK Engineering Group, Inc., an expert transportation engineering firm to collect cumulative truck trip data in the Bel Air community, at 5 separate locations, over a 48-hour period, in August 2014. See attached Exhibit J, expert opinion report from RK Engineering Group, Inc. (“RK Report”).

The RK Report conclusively demonstrates that existing truck trips, plus proposed Somma Way Project truck trips, estimated at 6,000 (in and out), will cause a “very significant impact” upon the Bel Air community, particularly on Somma Way and on Stone Canyon Road. RK bases its expert opinion on Los Angeles Department of Transportation’s (LADOT) existing standards, and on the standards and recommendations of the nationally respected Institute of Transportation Engineers (ITE), regarding road design, access and safety. See Exhibit J, p. 3. RK applied these standards to the sheer volume of existing heavy truck trips, already authorized by the City, plus the proposed truck trips for the Somma Way Project.

The RK report further concludes that the City’s proposed mitigation measures in the MND, and conditions of approval in the June 2014 Department of Transportation/Department of Public Work letter, do not reduce the significant impacts identified in the RK report to a less than

significant level. *See* Exhibit J, RK Report, pp. 8-10, particularly noting that more flagmen and better staggering of truck trips, will not eliminate the significant adverse impact to Bel Air's narrow roads from too great a total volume of truck trips.

The Alliance has also submitted, with this letter, several sworn declarations and comment letters, setting forth non-technical eye witness observations regarding traffic congestion and traffic safety impacts that exist now, due to cumulative truck traffic on the narrow roads in Bel Air. *See e.g.*, Exhibit B, Levinson Decl., ¶¶ 7, 16-17; Exhibit I, Hyman Decl., ¶ 10; Fisk Decl., ¶¶ 3-4, and Exhibit F, Meyer Decl., ¶¶ 4 and 6. Also attached hereto are comment letters from residents throughout the Bel Air community, detailing the current impacts from so many cumulative truck trips on Bel Air's narrow roads. *See* Exhibit L, Ray Kaufman letter; and Exhibit M, Helen Erickson letter.

Furthermore, the City's MND Initial Study concedes the potential safety hazard of adding the Somma Way Project truck trips to the already hazardous conditions. *See* Exhibit C, City MND Initial Study, p. 18, § XVI(d)-(e). So, here, the sworn declarations and resident comment letters are corroborated by the City's own admissions in its MND Initial Study.

Consequently, with regard to truck traffic impacts, the Alliance has presented a "fair argument," supported by "substantial evidence," in the form of expert opinion evidence, sworn declarations and comment letters, and the City's own admissions in its MND Initial Study. Such a "fair argument," supported by such "substantial evidence," requires preparation of an EIR, as a matter of state law. *See* Section II of this letter.

C. The Project Will Cause Significant Adverse Air Quality Impacts.

Since the City failed to conduct any project specific or cumulative air quality impact analysis for the proposed Somma Way Project, the Alliance retained Mr. Bill Piazza, one of the experts that helped formulate the South Coast Air Quality Management District ("SCAQMD") standards, for air quality impact significance thresholds, including for PM10 and NO2. Mr. Piazza is regularly retained by public agencies, including the L.A. Unified School District, to assess and report on potential air quality impacts.

Mr. Piazza's report, attached hereto as Exhibit N, sets forth his expert opinion that the Somma Way Project will result in air quality impacts for NO2 and PM10 particulate matter, and adverse impacts to sensitive receptors in the area around Somma Way and Stone Canyon Road. Mr. Piazza's Local Significance Threshold Analysis ("LST") concludes:

"Results of the LST analysis indicate that pollutant concentrations of PM₁₀, PM_{2.5} and NO₂ will exceed their respective significance thresholds at residential receptors located within identified contour intervals. As such, the analysis provides substantial evidence that the mitigation required by the City will not reduce pollutant concentrations and their subsequent impacts on adjoining residents."

See Exhibit N, LST Analysis, p. 8 (Conclusion).

Evidence concerning sensitive receptors is also set forth in Exhibit F, the sworn declaration of Jamie Meyer, ¶ 5.

The Alliance has also presented a letter from a Stone Canyon Road resident, Mr. Leonard Nimoy, who is 83 years old, and suffers from COPD. Mr. Nimoy will be adversely impacted by toxic emissions from at least 6,000 more truck trips on Stone Canyon Road, caused by the Somma Way Project. See Exhibit O attached.

Other residents on Stradella Road have also presented sworn declarations (Maureen Levinson) and comment letters attesting to the adverse dust impacts they have suffered from thousands of trucks hauling dirt from large construction projects on Stradella and Airole Way, including from 944 Airole Way, the 96,000 square foot building site, when 40,000 cubic yards of dirt are exported, for a 200 plus room "single family home." That volume of dirt export is approximately the same as the Somma Way Project, including dirt excavated and exported for the 270 soldier piles to be installed on the Somma Way Project site. See Leighton & Associates, expert opinion letter, Exhibit D hereto.

As discussed below in Section IV.A, the City admits that it does not require all exported dirt to be included in the haul route permit total, here 29,474 cubic yards of dirt. Thus, by its own admission, the City misleadingly understates the true amount of dirt to be exported (29,474 disclosed plus 19,000 undisclosed = 49,000 cubic yards in total, not 29,474 cubic yards disclosed in the City's MND). See Exhibit D, Leighton & Associates expert opinion letter; Exhibit A, Fisk Decl., ¶¶ 6-7.

Consequently, the Alliance has presented "a fair argument" of a potential adverse air quality impact, supported by substantial evidence in the form of an expert opinion report, sworn declaration(s) and residents' comment letters to this Board. Such a fair argument, supported by such substantial evidence, requires preparation of an EIR by the City, as required by state law. See § II of this letter.

D. The Project Will Cause Significant Noise Impacts.

The Alliance objects to the cumulative noise impacts (existing plus project) that will be caused by the Somma Way Project truck traffic. Existing construction-related truck trips are causing severe noise and vibration impacts throughout the Bel Air community, including on Stone Canyon Road, the haul route for the Somma Way Project. The Somma Way Project adds many thousands (6,000 plus) of truck trips to Somma Way and Stone Canyon Road, perhaps as many as 10,000 truck trips, with inclusion of the dirt exported for excavation of the 270 soldier piles for the Somma Way Project hillside stabilization effort. See discussion in Section IV.A, below, and Exhibit A, Fisk Decl., ¶¶ 6-7; and Exhibit D, Leighton & Associates, expert opinion letter.

The “substantial evidence” supporting this “fair argument,” of a cumulative adverse noise impact, are the sworn declarations of Levinson, Hyman and Kopald and Meyer, attached hereto as Exhibits B, I, P and F. Other substantial evidence supporting this fair argument are the comment letters from numerous Bel Air residents attached hereto as Exhibits L (Kaufman letter), M (Erickson letter), Q (Kaye letter) and R (Powers letter). Finally, the City’s own MND Initial Study concedes that temporary noise impacts will be “significant,” and exceed City noise standards. See Exhibit C, MND Initial Study, p. 28, § XII, (a)-(d).

All of the City’s noise analysis and mitigation measures address mitigating equipment noise on the Project site, BUT NOT dirt exported by large trucks down Somma Way and Stone Canyon Road, whose air brakes and engines are extremely noisy. See Exhibit C, MND Initial Study, p. 16, XII, and p. 28, § XII, and MND, p. 7, § XII-20, Mitigation Measures; and compare to Exhibit B, hereto, Levinson Decl., ¶¶ 5 and 10, Exhibits B and D, attaching video/audio of truck traffic noises on Stradella Road and Stone Canyon Road. See also Exhibit I, Hyman Decl. Stradella is immediately above Somma Way and runs parallel to Stone Canyon Road. See Exhibit S, hereto, grid map of Bel Air showing major haul routes, and current or proposed construction sites and Matrix discussing publicly available information on each construction site.

The personal observations of neighbors about existing or similar noise impacts nearby are “substantial evidence” under CEQA, because their personal observations of existing local conditions have adequate foundation as evidence. See *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872 (neighbor comments about similar nearby noise impacts provided “substantial evidence”); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583; and *Ocean View Estates Homeowners Ass’n v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402. See also Kostka & Zischke, *Practice Under CEQA*, § 6.42, p. 350.

As such, the Alliance has presented a “fair argument” concerning potential noise impacts, supported by “substantial evidence,” requiring the rejection of the City’s MND, and the preparation of an EIR.

IV. The City’s MND is Procedurally Flawed.

A. The MND Project Description Is Fundamentally Misleading.

The essential purpose of CEQA is full, accurate and fair disclosure of a project’s scope, and thereby full accurate and fair disclosure of a project’s environmental impacts in an EIR. See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450; and *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713. The same is true of with respect to the accurate and complete disclosure of a project’s impacts in an MND and Initial Study. See 14 Cal. Admin. Code §15378 (requiring an MND Initial Study to consider the “whole of the action,” necessary to implement the proposed project). Thus, “an initial Study that fails to describe the entire project is fatally deficient.” See Kostka & Zischke, *Practice Under CEQA*, p. 329, § 6.31, citing *Nelson v.*

County of Kern (2010) 190 Cal.App.4th 252, 267; and *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 (City MND violated CEQA by failing to include road realignment in project description for one commercial building).

Here, the excavation and export of almost 20,000 cubic yards of dirt for the Somma Way Project's soldier piles is an integral part of the overall project, necessary to its completion, and cannot be segmented from the project description in the MND. *See Communities for A Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70 (only a project with independent stand alone utility, and not necessary for the project's completion, can be omitted from the project description).

Here, the Somma Way Project description misleadingly states that the Project will export 29,474 cubic yards of dirt from the project site. *See e.g.*, MND, p. 1. To the contrary, evidence in the record shows that the Somma Way Project will export far more dirt, up to an additional 19,634 cubic yards, for a total of approximately 50,000 cubic yards, with the inclusion of dirt excavated for 270 cement soldier piles being installed on the Somma Way Project site. *See* Exhibit D, Leighton & Associates, expert opinion letter; Exhibit A, Fisk Decl., ¶¶ 6-7, and Exhibit E, Love Decl., ¶¶ 14-15.

The evidence establishing the misleading project description in the City's MND is as follows:

- (1) The Applicant's 2013 geotechnical report, submitted to the City, states that the unstable project system will require 193 cement soldier piles. *See* Exhibit D, Leighton & Associates Report, p. 1, summarizing the project's geotechnical study. Subsequent to that report, on August 13, 2014, the Applicant admitted at a public community meeting, attended by City officials (including Jeff Napier, the Chief Building Inspector), that 270 cement soldier piles would be required to stabilize the Somma Way Project site. *See* Exhibit A, Fisk Decl., ¶¶ 6-7; and Exhibit E, Love Decl., ¶¶ 14-15.
- (2) The City admitted at the August 13, 2014 Community Meeting that it did not require, as a matter of standard practice and policy, the Applicant to include the dirt excavated for soldier piles in the haul route permit total of cubic yards exported, and disclosed in the MND. *See* Exhibit A, Fisk Decl., ¶¶ 6-7; and Exhibit E, Love Decl., ¶¶ 14-15.

(NO MATTER THE VOLUME OF DIRT EXPORT REQUIRED FOR A PROJECT'S SOLDIER PILES, THE CITY DOES NOT REQUIRE ITS DISCLOSURE IN THE HAUL ROUTE PERMIT OR MND.)

- (3) The Alliance retained an expert geotechnical firm to determine the volume of dirt that would be excavated and exported for 193 soldier piles, as previously stated in the Somma Way Project's 2013 geotechnical report, and for 270 soldier piles, as recently disclosed by the Applicant at the August 13, 2014 Community Meeting. Leighton determined that 270 soldier piles would result in the export of approximately 19,634 cubic yards of additional dirt, in addition to the 29,474 cubic yards disclosed by the City in the MND Project Description. *See* Exhibit D, Leighton & Associates Report, pp. 1-2.

Without an accurate project description, the City's purported compliance with CEQA, through its MND, is meaningless; "Garbage in, garbage out."

B. The MND Improperly Defers the Formulation of Mitigation Measures.

The MND repeatedly defers the formulation of mitigation measures to future studies, in violation of CEQA, and also fails to provide any substantial evidence that listed mitigation measures or performance standards will be effective. *See Communities for A Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; and 14 Cal. Admin. Code Regs. § 15126.4(a)(1)(B).) The MND does not set forth clear performance standards, which future mitigation measures must satisfy to potentially allow a delay in the formulation of mitigation. *See e.g.*, MND Mitigation Measures VI-50 (Geotechnical); VI-60 (Landslide Area); VIII-40 (Staging and Parking Plan); VIII-70 (Emergency Evacuation Plan).

For example, mitigation measure VIII-40 states: "Prior to issuance of a grading or building permit, the applicant shall submit a construction staging and Parking Plan to the Department of Building and Safety and the Fire Department for review and approval." MND, p. 6. The MND is devoid of any analysis showing the efficacy of any such future staging/parking plan for 6,000-10,000 truck trips, and related worker parking, where the Somma Way Project site has a severely sloping hillside, identified as a landslide by the City, which precludes onsite staging or parking to occur. *See* Exhibit T, Decl., of James Ange, an expert hillside contractor, opining on the equipment and construction staging for the Somma Way Project. Consequently, the future staging/parking plan, to be drafted by the applicant, is pure fantasy, with no prospect of successfully avoiding the obstruction of access to homes on Somma Way, a very narrow substandard street. *See* Exhibit P, Kopald Decl., (a Somma Way resident), ¶¶ 2 and 7.

The proof that this mitigation measure for a future parking/staging plan is not serious, and will not work, is the video of conditions on nearby Stradella Road, which is regularly in total gridlock, with large trucks blocking any ingress and egress to homes in that part of Bel Air. *See* Exhibit B, Levinson Decl., ¶¶ 10-12 and 16-17, and video evidence attached thereto as Exhibits B and D. Somma Way and Stone Canyon Road are the next Stradella Road disaster about to occur with the approval of the Somma Way Project and the other massive projects along Stone Canyon Road. *See* Exhibit E, Love Decl., ¶¶ 6-13, and Matrix of Cumulative Projects, Exhibit A thereto. *See also* Exhibit F, Meyer Decl., ¶¶ 7-10; and Exhibit I, Hyman Decl.

C. The MND Fails to Study and Disclose Cumulative Impacts.

CEQA requires this City to analyze cumulative impacts that may occur from the proposed Somma Way Project, when its incremental impacts are added to approved, pending and probable future large construction projects, in the Bel Air community. *See* Section II.C above.

This City has failed to conduct a cumulative impacts analysis regarding other ongoing construction projects in Bel Air and to disclose such important information to the public. *See* Exhibit C, MND, p. 8, Mitigation Measure XVIII-10, and Initial Study, pp. 9-12 of MND. In fact, the City has thus far ignored the Alliance's written requests for information allowing a cumulative impacts analysis to be completed by the Alliance, at its expense, including Public Records Act Requests transmitted to the City's Departments of: Building and Safety, Planning, Public Works, and Transportation. *See* Public Records Act Requests attached hereto collectively as Exhibit K, and follow up letter regarding the same, attached as Exhibit K thereto.

The City's failure to conduct and disclose a cumulative impacts analysis for traffic impacts, air quality impacts and noise impacts, is—in and of itself—sufficient grounds to set aside the City's MND, as a violation of CEQA's procedural requirements. *See* § II.C.

In the absence of any effort by the City to analyze and disclose the cumulative impacts of approving so many hotel-sized "single family homes," ranging from 20,000 to 90,000 plus square feet, the Alliance paid for experts to do the work the law requires the City to do. *See* Exhibit A, Fisk Decl., ¶ 8; Exhibit E, Love Decl., ¶¶ 6-10; and the expert reports analyzing traffic, fire safety, and air quality impacts, and accurate volumes of dirt to be exported, attached hereto as Exhibits J, G, N and D. Each of those expert reports concludes that the proposed Project may cause significant cumulative impacts, when measuring the Project's incremental impacts in comparison to past, present and reasonably probable future projects, the standard established in CEQA.

D. The MND Improperly Assumes That Greenhouse Gas Emissions Are Not Potentially Affected.

CEQA requires a good faith effort to investigate and disclose a project's potential impacts upon Greenhouse Gas ("GHG") Emissions. *See* 14 *Cal. Code Regs.* § 15064.4. A good faith effort should typically include an estimate of the proposed project's GHG emissions, here for 6,000 to 10,000 truck trips for the export of dirt alone, and for other construction related truck trips; whether the project increases or decreases GHG emissions over the current baseline of the existing conditions on the ground (a 3,799 square foot house on a densely wooded hillside); whether a cumulative increase in emissions jeopardizes the attainment of any state GHG emission reduction goals and mitigation measures to reduce GHG emission impacts. *See* 14 *Cal. Admin Code* § 5064.4; and Kostka & Zischke, *Practice Under CEQA* Kostka, pp. 1031-1038, §§ 20.82 through 20.86. The City's MND reflects no such effort, and certainly no "good faith" effort.

The City's MND Initial Study entirely omits Greenhouse Gas Emissions from the list of environmental factors potentially affected. *See* MND Initial Study, p. 13. In explaining the omission the City concedes that "Although the proposed structure is larger than the existing structure, it is expected to result in a less than significant impact on greenhouse gas emissions." MND Initial Study, p. 25, § VII(a). The City's "expectation" or "assumption" is not supported by any study or analysis for this 40,000 square foot building, nor does it consider the 6,000 truck trips required to export almost 30,000 cubic yards of dirt from an existing hillside. Nor does the City consider the additional 19,000 cubic yards of dirt that must be excavated and exported to drill the 270 soldier piles in order to stabilize the hillside on the Somma Way Project site. *See* Exhibit A, Fisk Decl., ¶¶ 6-7; and Exhibit D, Leighton & Associates expert opinion report. The additional dirt export required equates to 4,000 additional truck trips, or 10,000 truck trips in total, without including the 1,500 cement trucks required to fill the 270 soldier piles. *See* Leighton & Associates opinion, Exhibit D.

The City may not simply "expect" or "assume that 6,000 to 10,000 large truck trips for one 40,000 square foot hillside building, will not contribute to Greenhouse Gas emission impacts individually, or cumulatively, when its incremental impacts are added to the other mega sized buildings now being built in the Bel Air community, especially when many of these buildings require massive earth moving operations to export hillsides and small mountains. *See* Exhibit E, Love Decl., ¶¶ 9-13, and Exhibit A thereto. *See also* Exhibit V, photos of mega-sized project sites removing Bel Air's hillsides.

E. The MND Does not Adequately Disclose and Mitigate Wasteful Energy Usage During Construction.

Under CEQA, an EIR is "fatally defective" when it fails to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient and unnecessary consumption of energy." *See California Clean Energy Committee ("CCEC") v. City of Woodland* (2014) 225 Cal.App. 173, 209-2010, citing *Public Resources Code* § 21100(b)(3). Appendix F to the CEQA Guidelines provides that when relevant to a project, an EIR should consider: "Energy consuming equipment and processes which will be used during construction, operation and or removal of the project. (CEQA Guidelines, App. F, subd. (II) (A) (1)." *See CCEC v. City of Woodland*, 225 Cal.App. at 2010 (emphasis the court's). In *CCEC v. City of Woodland*, the court found a one page discussion of these issues in the EIR to be conclusory and inadequate.

Here, the City's MND and Initial Study fails to even address the issue of wasteful or unnecessary energy use, and mitigation measures regarding the same, despite the project's use of up to 10,000 diesel truck trips, for dirt export alone. *See* Exhibit C, MND and Initial Study, page 13. The failure to analyze and disclose construction-related energy use to remove up to 49,000 cubic yards of earth, including for excavation of 270 soldier piles, is a substantive failure to comply with CEQA by disclosing impacts on the Project's energy use and waste of energy. *See PRC* § 21100(b)(3). The failure of the Initial Study to disclose energy usage regarding non-haul truck trips, for example an estimated 1,500 cement truck trips for the soldier piles alone, and

unquantified truck trips for lumber and steel deliveries, etc., is also a failure to comply with the City's energy use disclosure requirements under CEQA.

F. The MND Initial Study Does Not Adequately Disclose and Mitigate Impacts to Protected Coast Live Oak Trees.

The MND Initial Study concedes that the project will remove or adversely impact 3 protected Coast Live Oak trees. *See* Exhibit C, at p.21, § IV. The MND and Initial Study fail to disclose whether the impacted trees are unique heritage oaks, over a certain age and size, the destruction of which cannot be mitigated by planting two 48" box replacement trees, "if available," with similar sized canopies, for each protected tree removed. *See* Exhibit C, MND, p. 3, § IV-80. Furthermore, the actual formulation of mitigation measures for the removal of 3 protected Coast Live Oak trees are deferred until the future, after the public can no longer assess the effectiveness of those measures in the context of this MND. *See e.g.*, Exhibit C, MND, p. 3, section IV-80 (bullet 2) ("All protected tree removals require approval from the Board of Public Works"), and § IV-80 (bullet 3) ("A Tree Report shall be submitted to the Urban Forestry Division of the Bureau of Street Services, Department of Public Works, for review and approval.")

The failure to adequately disclose the nature of the impact is a substantive violation of CEQA and an abuse of discretion. The failure to identify the impact as significant and unavoidable, if in fact the 3 Live Oak trees are unique heritage oak trees, the net loss of which is not physically possible to mitigate, is also a prejudicial abuse of discretion. Finally, the deferral of the formulation of mitigation measures to a future Public Works Department approval, is also a prejudicial abuse of discretion. *See* § IV.B above, regarding improper deferral of mitigation.

V. CONCLUSION.

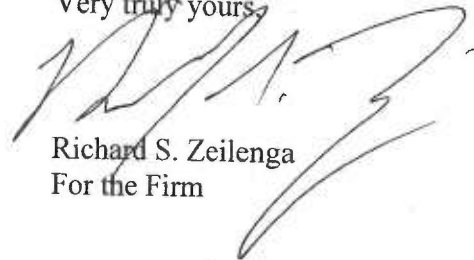
On behalf of the Bel Air Homeowners Alliance we respectfully request that this Board honor its primary obligation to the health, safety and welfare of existing residents in the Bel Air community, and deny approval of the MND and the requested haul route permit, as required by City Municipal Ordinance 91.7006.7.4(5); and CEQA, *PRC* § 21000 *et. seq.*

This Board should further direct the Building and Safety Department to freeze the processing of any additional haul route permits in the Bel Air community, for at least the next 120 days. Issuance of any further haul route permits should also be stayed until such time as City Staff have made recommendations for regulating the cumulative volume of truck trips in the

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Bel Air community, the public has been given an opportunity to review and comment upon those regulations, and they have been formally codified by the City Council.

Very truly yours,



Richard S. Zeilenga
For the Firm

RSZ:bsm
Enclosures

cc: Honorable Eric Garcetti, Mayor
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Bel Air/Beverly Crest Neighborhood Council
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