

LUNA & GLUSHON

A T T O R N E Y S

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November 3, 2014

VIA EMAIL to Sharon Gin, Legislative Assistant, Office of City Clerk

Los Angeles City Council
Planning and Land Use Management Committee
Councilmember Jose Huizar, Chair
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander

Re: 1540 Skylark Lane
Council file No. 14-1413

Honorable Councilmembers:

Our law firm represents Warren J. Kessler and Joan B. Kessler appellants of the determination of the Board of Building and Safety Commissioners ("BBSC") to approve the application to export 2,087 cubic yards of earth from 1540 North Skylark Lane ("the Haul Route") and the proposed Mitigated Negative Declaration ("MND") ENV-2014-2105-MND.

For the reasons set forth below, the City Council should grant the appeal and find that the proposed MND is inadequate in that it fails to consider the cumulative impacts of other pending haul routes within this community.

1. The MND fails to consider cumulative impacts in violation of the California Environmental Quality Act ("CEQA").

CEQA requires the consideration and analysis of potential cumulative impacts as part of the environmental review process. *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal App.4th 1209; *City of Carmel-By-The-Sea v. U.S. Dept. of Transportation* (1997) 9th Circuit, 123 F3d 1142, 1165.

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Just recently on October 28, 2014, at a hearing before the BBSC on yet another haul route project, staff made a power point presentation showing that there were **17 pending and/or approved haul routes** in the neighborhood known as the "Bird Streets" in the Hollywood Hills portion of Council District 4 ("the neighborhood"). This is in addition to the subject Haul Route on appeal.

Since the proposed MND fails to identify, consider or analyze the potential cumulative impacts of these other 16 haul routes (i.e.: streets to be used; dates and times; potential cumulative impacts on traffic and public safety, etc.) the MND is inadequate as a matter of law and should not be adopted.

In *Arvio Enterprises Inc. v. South Valley Area Planning Commission*, upon discovery that an applicant was filing a series of separate permit applications to develop parcels in the same area, leading to categorical exemptions and MND's, the City suspended all said permits and required the applicant to conduct an Environmental Impact Report ("EIR") in order to evaluate cumulative impacts of the entirety of other potential development. When the applicant sued, the trial and appellate courts upheld the inadequacy of the MND based on the need to consider cumulative environmental impacts.

The requirement to consider cumulative impacts goes beyond a mere technical point of process. The subject appeal, as well as the other 16 haul routes, involve hillside areas with narrow streets which already pose serious hazards to public safety and emergency responders. Councilmembers will note that in the past year, two law enforcement officers were killed by construction-related vehicles in the Hollywood hillside area.

At the present time, City staff does not regulate or even know the exact dates and durations when each of the other 16 approved or pending haul routes will be "active" and whether or not there would be any overlap on the same or nearby streets that would impact public safety.

Based thereon, the City Council should grant the appeal, in part, by not adopting the proposed MND because the MND did not consider and analyze the potential cumulative impacts on traffic and public safety of the other approved and/or pending 16 other haul routes in the neighborhood.

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2. The Haul Route impermissibly goes over a private street

At the October 7, 2014 BBSC hearing for the Haul Route, City staff conceded that Skylark Lane is a privately owned street. The City has no authority or jurisdiction to grant an Applicant a haul route over a private street.

Thank you for your consideration.

Very truly yours,

LUNA & GLUSHON

A handwritten signature in cursive script, appearing to read "Rob Glushon".

ROBERT L. GLUSHON