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December 1, 2014

Honorable Councilmember Jose Huizar
Honorable Councilmember Gilbert A. Cedillo
Honorable Councilmember Mitchell Englander
200 North Spring Street
Los Angeles, California 90012

Re: Council File No. 14-1533; ENV-2014-962-MND
10830 West Chalon Road
Agenda Item No. 5

Dear Honorable Councilmembers:

We represent HHP Investments, L. P. (the "Applicant"), the applicant for the aforementioned matter. On October 28, 2014, the Board of Building and Safety Commissioners (the "Board") approved a haul route permit authorizing the removal of 9,802 cubic yards of dirt from the Applicant's property which is located at 10830 West Chalon Road (the "Property") in the City of Los Angeles (the "City"). In addition, the Board adopted the Mitigated Negative Declaration No. ENV-2014-962-MND (the "MND") that the City had prepared and circulated for public comment in accordance with the California Environmental Quality Act ("CEQA"). Appeals to the Board's approval were filed on November 7, 2014, by James and Helen Zukin (the "Zukins") and by the Bel Air Homeowners Alliance (the "Alliance") (collectively referred to as the "Appellants"), neither of whom had submitted a comment letter questioning the MND when it was prepared and circulated for comment pursuant to CEQA. The Alliance's request that the City prepare an EIR for a haul route permit, and the Zukins' request that the City revise and recirculate the MND, are not legally supportable and are without merit. We respectfully request that you uphold the Board's approval.

I. INTRODUCTION

The facts are simple. The Applicant has proposed to build a 7,337 square foot *single-family house* on the Property that complies with the City's Municipal Code, including the Planning and Zoning Code and the Baseline Hillside Ordinance, and the City's Building Code (the "Project") The Applicant has not requested a single deviation or variance from the City's rules and regulations.

The only discretionary approval is the haul route permit. The Applicant has voluntarily agreed to restrict its construction activities through various methods including, without limitation: (i) limiting the hauling to between the hours of 9:00 AM and 3:00 PM to avoid the peak hour

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traffic period; (ii) no hauling on weekends and holidays; and (iii) employing a minimum of three (3) flag attendants, each with two-way radios, to assist with the coordination of the haul trucks including halting movement to permit emergency vehicle ingress and egress through the area. These restrictions incorporated as conditions of approval, along with the mitigation measures imposed on the Project, create an extremely conservative method of removing dirt from the Property, which mitigates all potential impacts, including impacts to traffic, noise, and air quality to a level of insignificance.

II. THE ALLIANCE AND THE ZUKINS HAVE FAILED TO RAISE A FAIR ARGUMENT QUESTIONING THE LEGALITY OF THE MND

The Alliance and the Zukins rely on each other's submissions to support their claims that the MND is inadequate for this Project. However, the overwhelming majority of the alleged evidence of a potential for an environmental impact which would require an EIR, or the inadequacy of the MND which would require revising and recirculating the MND, is based on another project involving a haul route using different streets within Bel Air and the removal of approximately 29,000 cubic yards of dirt in order to stabilize the landslide mass located at and around that property. Although the Alliance submitted reports from individuals who are not familiar with this Project and testimonials from residents near the other project, the Appellants have failed to raise a fair argument supported by substantial evidence that the City must prepare an EIR for a haul route permit for this Project. Similarly, the Zukins have failed to present a fair argument that an EIR should be prepared or a revised MND should be circulated because they rely on the Alliance's irrelevant submissions as well as on an air quality analysis that fails to take into consideration all the conditions and mitigation measures placed on this Project.

In evaluating whether substantial evidence supports a fair argument that a project may have a significant effect on the environment, the City must base its determination on the entire record. Arguments, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, evidence that is not credible, and evidence of social and economic impacts that do not contribute to, and are not caused by, physical impacts do not constitute substantial evidence. (§21080(e)(2) and 21082.2(c) and Guidelines, §15064(f)(5) and 15384.) Courts have rejected the inference that the existence of factual controversy, uncertainty, conflicting assertions, argument, or public controversy can of themselves nullify the adoption of a negative declaration and require the preparation of an EIR when there is no substantial evidence in the record that the project as designed and approved will fall within the requirements of the CEQA. (*Running Fence Corp. v. Superior Court* (1975) 51 Cal.App. 3d 400, 424.)

All of the Alliance's "evidence" is predicated on a different project and the unsubstantiated belief that this Project will require the removal of more dirt than is set forth in the permit.

For instance, the memorandum submitted by the Alliance regarding the amount of dirt that would be removed from the Property, the traffic analysis, and the fire safety letters are all for the project located at 10699 Somma Way that the Alliance appealed, not the Project being

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considered here. An appellant cannot claim that analysis for an entirely different project is evidence, yet alone substantial evidence, that the City should have prepared an EIR.

Appellants have submitted no evidence that the amount of dirt to be exported will exceed the permitted amount of 9,802 cubic yards. Accordingly, all of the Alliance's "evidence" is either unsubstantiated opinion or narrative or is based on another project or clearly devoid of a factual basis.

Common sense is an important consideration at all levels of CEQA review, including the determination whether a project's impacts are significant in light of the broader context in which they will occur. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.) In this case, the Project size and amount of dirt to be removed is modest by the standards of the surrounding community. Rather than presenting a fair argument that this Project has a potential significant impact on the environment, the Appellants are using CEQA to object to the rights of all property owners in the Bel Air area to improve their properties even though they may do so as a matter of right with no discretionary City approvals.

As is further discussed below, there is no fair argument supported by substantial evidence in the record of a significant effect because the temporary construction activity for this Project will not create "a substantial, or potentially substantial, adverse change in the environment." (§ 21068; Guidelines, § 15382.) The temporary noise, vibration, and traffic issues presented by the Appellants are not only based on incorrect assumptions as to the quantity of dirt to be removed, and the hours of grading, excavation and foundation activity, but also fails to provide a fair argument that there will be a substantial, adverse change in the environment caused by this Project.

A. The MND Appropriately Described the Project and Conservatively Analyzed the Amount of Dirt that Will be Hauled from the Property.

Appellants contend that the MND project description is faulty because it did not disclose the total amount of dirt which would need to be exported. Appellant's are under the mistaken belief that the 9,802 cubic yards described in the MND does not include additional cubic yards for drilling caissons or soldier piles. However, they present no evidence to substantiate that assertion. Relying on a report prepared for another property is not evidence of the amount of dirt that is to be removed on this Project.

Appellants also contend that the Project Description is faulty because of a failure to disclose the number of required caissons/soldier piles for construction of the home. However, the Appellants contend they need this information because of their unsubstantiated and incorrect assertion that this Property contains a landslide condition that would require more than the permitted exportation of 9,802 cubic yards of dirt. In fact, although the MND specifically states that the Property is not located in an Alquist-Priolo Zone, since all properties in Southern California have a potential for seismic activities, the Project would be required to comply with the City's seismic safety requirements (MND Section VI). Appellants have presented no evidence that those

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requirements would result in the exportation of a greater amount of dirt than the permitted 9,802 cubic yards. The project description for an MND does not have to include all the elements of the construction design, but rather is intended to give the public a general overview of the project and its location. The MND adequately describes both.

The Leighton report submitted by Appellants was prepared without an understanding of the proposed development it purported to analyze. Even more importantly, it was prepared for and related to a project on Somma Way and not this Project. Nonetheless, the basis for the Leighton reports criticism of the Somma Way property is that the total combined earth volume would be either 38,767 cubic yards or 49,034 cubic yards. Leighton is incorrect. Even if it were not incorrect, the amount of dirt to be removed from that property has no bearing on the much smaller amount of dirt to be removed on this Property.

The haul route permit expressly limits the amount of hauling to 9,802 cubic yards, so the City would be permitted, and in fact required, to limit the hauling to 9,802 cubic yards. Therefore, the opinion of the Appellant's expert on another project fails to provide any evidence, substantial or otherwise, of the adverse impact of the correct amount of dirt which will be hauled from the Property. As a result, the Appellants have failed to provide a fair argument that the mitigation measures imposed on this haul route for this Project may result in significant unmitigated impacts.

Therefore, the MND correctly analyzed the amount of earth that will be hauled from the Property and correctly concluded that the strict conditions of approval and mitigation measures imposed by the MND would be sufficient to reduce any adverse environmental impacts to a level of insignificance.

B. The MND Correctly Analyzed the Project's Cumulative Impacts.

The Appellants assert that the City failed to consider any cumulative impacts of the haul route. The record reflects that this is incorrect. The City is aware of all of the haul route permits it issues and, in fact, the City did review all other activity in the general vicinity when it determined that there were no cumulative impacts caused by the short duration of this project's haul trips.

The Appellants submitted maps of projects that residents in the community believe may need to haul dirt. The Appellants did not even suggest the route that the haul trucks would take, yet alone the timing of each such activity. As a result, no fair argument was made that the haul route for this Project would be utilized at the same time as any other project's haul route creating any adverse cumulative impact.

Therefore, the City correctly analyzed the project's potential cumulative impacts.

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C. The MND Correctly Concluded that the Project will not Cause Significant Adverse Air Quality Impacts.

The MND correctly concluded that, as mitigated, the Project will not cause significant adverse air quality impacts. In fact, the MND incorporated multiple mitigation measures to reduce potential air quality impacts. For instance, Mitigation Measure III-10 requires that the Applicant take steps to ensure that the hauling does create adverse air quality impacts to individuals along the haul route path, including ensuring that all dirt/soil loads be secured by trimming, watering or other appropriate means to prevent spillage and dust and all dirt/soil materials transported off-site be either sufficiently watered or securely covered to prevent excessive amount of dust.

The Alliance submitted a letter that concludes, based again on erroneous assumptions, that construction could create significant air quality impacts. However, this letter does not provide any analysis, and in fact, refers to a different project and incorrect grading quantity for that project to reach its incorrect conclusion. A letter prepared by someone that raises incorrect and hypothetical concerns without any evidence of the impacts of this Project is not a fair argument.

The Zukers submitted a report prepared by Pomeroy Environmental Services (“PES”) that purported to review the environmental impacts of this Project. PES specifically found that there were no significant regional air quality impacts caused by the construction or operational phases of the Project. However, the PES report does state that there may be localized construction impacts due to the grading, excavation and foundation phase of construction. That conclusion, however, is drawn using assumptions regarding the intensity of construction activities that are incorrect. In order to achieve a level of PM₁₀ and PM_{2.5} levels that exceed the South Coast Air Quality Management District’s thresholds of significance for localized sensitive receptors (the immediate neighbors), PES assumed that such activities would be conducted eight hours per day causing peak daily emissions that exceed the thresholds. In fact, the Project has been conditioned so that there is no hauling activity during peak hours. Hauling is restricted to the hours of 9:00 am to 3:00 pm on weekdays only – two hours less than assumed in the PES model. Accordingly, Appellants have failed to submit substantial evidence of the actual air quality impacts of this Project with its limitations on hauling activities.

The City did impose strict conditions on the haul permit and significant mitigation measures to insure that air quality impacts would be mitigated to levels of insignificance; including, among other measures, a requirement stating that all clearing, earth moving or excavation activities shall be discontinued during periods of winds greater than 15 mph (Mitigation Measure III-10). Therefore, the MND correctly concluded that the project will not cause significant adverse air quality impacts, and the Appellants have failed to raise a fair argument otherwise.

D. The MND Correctly Analyzed the Project’s Potential Fire Emergency Evacuation Impacts.

The MND correctly concluded that, as mitigated, the Project would not result in a significant impact to fire emergency evacuation. As noted in the MND, the Property is located in a Very

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High Fire Hazard Severity Zone, and is subject to preparation of an emergency evacuation plan in consultation with the City of Los Angeles Fire Department (Mitigation Measure VIII-70). The agency, here the City Fire Department, is the appropriate body to determine whether a project would pose a fire danger. The City Fire Department will regulate emergency exits, evacuation routes for vehicles and pedestrians, and the location of nearest hospitals and fire departments.

The Appellants submitted two letters from retired fire officials, neither of whom was ever employed by the City of Los Angeles Fire Department, questioning whether another project would be safe. Neither letter provides any evidence, yet alone a fair argument, that this Project would jeopardize the health or safety of anyone in the community or the fire officials. Both letters refer to the Somma Way project and both letters state the authors' objections to the construction of an approximately 40,000 square foot single-family home involving the exportation of approximately 20,000 cubic yards of dirt and a haul route which uses different streets in Bel Air than this Project. Moreover, the City through its conditions of approval and mitigation measures, adequately addresses these issues. For example the City is requiring a minimum of three flagman for this Project to ensure that haul trucks are stopped from leaving or entering the area if the streets need to be clear for emergency vehicles Condition of Approval number 7).

Therefore, the MND correctly analyzed and mitigated the Project's potential fire emergency evacuation impacts, and the Appellants have failed to raise a fair argument to the contrary.

E. The MND Correctly Concluded that the Project will not Cause Significant Truck Traffic Congestion Impacts.

The MND correctly concluded that the Project will not cause significant truck traffic congestion impacts. The Applicant has agreed to limit hauling to between the hours of 9:00 AM and 3:00 PM to avoid the peak hour.

The traffic report that the Appellant's submitted was prepared for the Somma Way project, which uses a different truck route (different streets), and incorrectly assumes that trucks will be hauling during peak hour, and in other places relies on Orange County design criteria for the width of streets, which is nonsensical for analyzing potential impacts in the City of Los Angeles in general and this Project in particular. The Los Angeles Department of Transportation report that the Alliance's traffic report relies upon details the percent of trucks during peak hours, which is irrelevant to the Project since the Project will not be hauling any dirt during the peak hours. With incorrect premises and the reliance on irrelevant documents, the analysis and conclusions cannot be relied upon and should not be considered a fair argument.

Therefore, the MND correctly concluded this Project, as mitigated, will not cause significant truck traffic congestion, and the Appellants have failed to raise a fair argument to the contrary.

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F. The MND Correctly Concluded that the Project will not Cause Significant Noise Impacts.

The MND correctly analyzed the potential construction related noise and vibration impacts, and concluded that with mitigation, the levels would be less than significant. The MND analyzed construction impacts on developing a single-family house in a residential neighborhood, including the required grading, and correctly concluded that, with mitigation, the Project would not cause a significant noise impact. The Project is mitigated to limit the hours of construction activity, the number of noise-emitting equipment operating at any one time, and the type of construction equipment utilized. The MND states that the noise level and duration of the construction for a single-family house will be typical of residential structures which are less than significant. There is no evidence presented to the contrary.

The letters that the Appellants submitted as “fair argument” relate to other projects, not this Project, and compare the other projects that were not conditioned to limit the number of hauling trips. In particular, the letters generally reference other construction sites using different streets for their haul routes. The Appellants have failed to raise any arguments, yet alone a fair argument, or present any substantial evidence, that this Project will cause significant noise impacts.

Therefore, the MND correctly concluded that the Project will not cause significant noise impacts, and the Appellant’s have failed to raise a fair argument otherwise.

G. The MND Correctly Analyzed Greenhouse Gas Emission Impacts.

The City reviewed the Project’s potential greenhouse gas emission impacts, and correctly concluded that the development of a single-family house will not cause significant greenhouse gas emissions. The Appellants have failed to provide any evidence to the contrary.

Therefore, the MND correctly analyzed the potential green gas emission impacts, and the Appellants have failed to raise a fair argument otherwise.

H. The MND Adequately Disclosed and Mitigated Wasteful Energy Usage During Construction.

The City reviewed the project’s potential energy usage impacts, and correctly concluded that the development of a single-family house will not cause significant impact to energy. The MND includes Mitigation Measure XVII-90, which would reduce the project’s energy usage to less than significant. The Appellants have failed to provide any evidence to the contrary.

Therefore, the MND correctly analyzed the potential energy usage impacts, and the Appellants have failed to raise a fair argument otherwise.

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I. The Board Adequately Reviewed the MND.

Appellants contend that the Board did not understand its obligations to review and adopt the MND. They point to some discussion at the Board meeting which purports to reflect confusion on the Board's part. However, the record is clear the Board made the following specific finding prior to adopting the MND: "...with the imposition of the mitigation measures described in the MND, and incorporated herein as project conditions, there is no substantial evidence that the proposed project will have a significant effect on the environment, pursuant to the City's Environmental Guidelines and is in compliance with the California Environmental Quality Act." In fact as a condition of approving the haul route, the Board added an additional condition not previously recommended by staff, requiring that each truck have a placard with the project address and did not approve the MND and haul route until it had received input from the City of Los Angeles Departments of Transportation and Public Works. Appellants' reliance on statements that may have been made in other matters is not evidence of any lack of exercise of the City's independent judgment on the MND which the City prepared.

J. The Board Does Not Rely on Unenforceable Mitigations Measures.

Appellants contend that Mitigation Measure VIII-40, the Hillside Construction Staging and Parking Plan, is not enforceable as written because it has the incorrect department of the City as the enforcing agency. The City's departments are but units of the City. The City can and should identify which department will have the responsibility to enforce any mitigation measure but as a condition of the approval of the haul route permit, the Department of Building and Safety has the authority to enforce the condition itself or request assistance in the enforcement from any other City department. Therefore, there is no reliance on an unenforceable mitigation measure. If the Applicant violates the conditions of the permit, the permit can be revoked and the Applicant will not be able to continue with the hauling activities. Thus, Appellants have not provided a fair argument that the mitigation measure is not enforceable.

K. The Board Did Not Violate Municipal Code Section 91.7006.7.4(5).

Appellants contend that my failing to find that this Project would endanger public health, safety and welfare, the Board acted in violation of the City's Municipal Code Section 91.7006.7.4.(5). This is clearly an erroneous and unsupported statement since the Appellants have presented no evidence showing that permitting the construction of a single-family home and using the public streets for access and egress to the Property constitute a danger to the public health, safety or welfare. The approval of this haul route and the MND appropriately condition the project and impose mitigation measures that reduce any impact of the project to less than significant levels under CEQA. The Appellants failed to present any evidence that the conditions and mitigation measures for this Project would be ineffective or any evidence that this Project would endanger the public in general or the residents of Bel Air. Therefore, this grounds for appealing the issuance of a haul permit is without merit.

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III. CONCLUSION

The Appellants' assertions are based on faulty assumptions and do not rise to a "fair argument" requiring the City to prepare an EIR for a single-family house, or to revise and recirculate the MND. At the end of the day, this is the development of a single-family house that complies with the City's rules and regulations. In order to build a home that Appellant is permitted by code to build, the Applicant is required to haul the dirt off site. The Applicant has agreed to limit the grading to non-peak hours. Other than removing the dirt one shovel at a time, this is the most conservative method of grading the Property to City standards that would allow the development of a single-family house on the Property.

We appreciate your time and attention to this matter, and if you have any questions, please do not hesitate to contact me.

Sincerely,



Edgar Khalatian

cc: Mr. Shawn Bayliss, Council District 5, Director of Planning and Land Use
Ms. Sharon Gin, Legislative Assistant