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August 25, 2017

**VIA E-MAIL (zina.cheng@lacity.org)**

Chairman Jose Huizar and Hon. Members of the  
Planning & Land Use Management Committee  
Los Angeles City Hall  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012  
Attn: Zina Cheng, Legislative Assistant

Re: 2937 & 2945 North Glendower Avenue, Appeal of Haul Route Approval  
Board File No. 170017  
Council File No.: 17-0864  
PLUM Hearing Date: August 29, 2017

Dear Chairman Huizar and Honorable Members of the PLUM Committee:

On July 25, 2017, the Board of Building and Safety Commissioners ("BBSC") unanimously approved the haul route requested by our client to allow for the construction of a by right single-family home proposed for 2937 and 2945 Glendower Avenue in the Los Feliz community. The BBSC's approval of this route was by no means a "rubber stamp" approval. The proposed route and its associated conditions of approval were closely vetted by Los Angeles Department of Building and Safety ("LADBS") staff and the BBSC over multiple hearings, with substantial input from the community and Councilman David Ryu's office. This ultimately resulted in dozens of modified and new conditions, including but not limited to (i) reduced hauling hours from 10:00 a.m. to 3:00 p.m. on only Mondays, Tuesdays, Wednesday, and Fridays; (ii) limitations on staging and construction worker parking, (iii) the use of *eleven* flag attendants, with three of those attendants stationed in front of individuals' personal residences; (iv) application of several dust control measures; (v) requirements for postings and community notifications; and (vi) various other conditions included at the request of the community. Our client also agreed to reduce the total amount of hauling from the 9,800 cubic yards - the amount originally requested in the application - down to 8,500 cubic yards, an almost 15 percent reduction in the total amount of dirt to be exported. In consideration of the route and the substantial conditions of approval, pursuant to Los Angeles Municipal Code ("LAMC") § 91.7006.7.5, the BBSC found that the haul route would not endanger the public health, safety and welfare of the community, and thus the proposed route was approved.

Notwithstanding our client's agreement to these conditions, two appeals were filed against the approval. Interestingly, neither appellant lives along the approved route. The first

appeal, dated August 4, 2017 – but stamped by the City Clerk August 3, 2017<sup>1</sup> – alleges a variety of inaccurate, inapplicable, and erroneous claims, most of which have little or nothing to do with the actual haul route and/or its conditions of approval. In fact, the majority of the appeal points concerned claims and complaints about the design of the proposed new home, including claims concerning approved amount of Residential Floor Area ("RFA"), site geology, and the size of the home in comparison with other homes in the area. The second appeal filed on August 4, 2017, makes similarly inapplicable claims, with blanket statements that the hauling cannot be performed safely without any reference to the conditions of approval required by BBSC, as well as claims concerning the new home's RFA, a lot tie, and "valley fever."<sup>2</sup> Both appeals make broad claims concerning hauling activity, soil stability, and the complexities of maneuvering trucks on hillside streets, while at the same time completely ignoring the substantial conditions of approval tailored to address these very same concerns.<sup>3</sup> While our client understands the general grievances the community has with traffic and construction in the hillsides, these appeals are not justified, and should be denied by the City Council for the reasons set forth below.

**A. THE APPEALS FAIL TO PROVIDE ANY EVIDENCE THAT THE APPROVED HAULING CANNOT BE PERFORMED SAFELY.**

As noted above, LAMC § 91.7006.7.5 sets forth the standards for approving and conditioning haul route approvals. The section provides that the BBSC "shall [] grant or conditionally grant approval" unless it determines that the requested activity "will endanger the public health, safety and welfare." Throughout BBSC proceedings, substantial consideration was given to the relative safety and feasibility of the proposed haul route in relation to the community's concerns. As noted above, this consideration resulted in the addition of dozens of new conditions of approval, many of which were specifically tailored to address the concerns of the community. These two appellants, neither of whom live on the same street as the project or along the proposed route, have asserted a variety of generalized concerns about the safety of haul trucks using hillside roads and slope stability. None of these assertions however, support their request that the City Council find that the BBSC erred in its decision to approve this route.

No evidence whatsoever supports the appellant's broad allegations that this specific route may not be safely and reasonably traversed in the same manner that other approved routes have been throughout the City's hillside areas. Moreover, there has been no evidence presented that supports a conclusion that this haul route will endanger the public health, safety and welfare. In fact, considering the size of the export amount, the several voluntary measures proposed as part of this haul route, and that this will be the only active haul route operating on these hillside streets, this route likely poses substantially less risk than other routes

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<sup>1</sup> Given the conflicting dates identified on the appeal documents, we reserve the right to argue that both appeals were untimely filed.

<sup>2</sup> Notably, the new home proposed for this site is in full conformance with the LAMC and the Baseline Hillside Ordinance, and is being constructed with *less* RFA that is otherwise allowed on the property.

<sup>3</sup> For example, with respect to the appellant's concerns regarding Valley Fever, a condition of approval requires the applicant to retain an expert to analyze the site for Valley Fever risks before proceeding with hauling.

approved in similar hillside areas across the City. This is a safe and reasonably proposed route, evidenced not only by the measures proposed by applicant, but also the findings and recommendation of the BBSC.

Given this, it is critical that the City refuse to allow generalized complaints about traffic and over-development prejudice its consideration of this one applicant's haul route approval. Fairness and due process standards require that the City's decision be supported by substantial evidence, meaning facts or expert opinions supported by facts that are sufficiently reliable to have *solid* evidentiary value. On the other hand, expressions of subjective concerns and personal beliefs do not constitute substantial evidence. *Newberry Springs Water Ass'n v County of San Bernardino* (1984) 150 CA3d 740; *Perley v Board of Supervisors* (1982) 137 CA3d 424. Speculation, argument, and unfounded conclusions are likewise not substantial evidence. *Pala Band of Mission Indians v County of San Diego* (1998) 68 CA4th 556, 571; *Citizens Comm. to Save Our Village v City of Claremont* (1995) 37 CA4th 1157, 1171. Here, the BBSC found that the facts show that the approved haul route is safe and reasonable under the circumstances, and the appellants have not shown that they erred in making this determination.

Moreover, generalized grievances made by the appellants that the streets are small, contain sharp corners, and have steep inclines, and otherwise appear to be unsafe, are not grounds for justifying these appeals. Haul routes like these are common throughout the City's hillside areas, and the conditions of approval required by the BBSC are exactly the measures applied to assure that they will be performed safely. On this route in particular, While the applicant certainly sympathizes with the concerns of certain community members that have major concerns over other projects in the hillside, these complaints cannot and should not form a basis for denying this applicant their right to develop a single-family home on his property.

**B. THE APPLICANT AGREES TO ADDITIONAL CONDITIONS OF APPROVAL PROPOSED BY COUNCIL DISTRICT 4.**

Given the community's concerns, the applicant has worked closely with Council District 4 to make sure that they are doing everything feasibly possible to be responsive to as many valid concerns as possible. Through this engagement, the Council Office has requested that the applicant agree to further conditions of approval that the office crafted in response to additional input received from concerned residents. Significantly, the applicant has agreed to voluntarily accept each and every proposed condition. These conditions have been tailored specifically to be responsive to the appellant's and the community's concerns, and will assure that this haul will be safely performed and will be courteous to the neighboring residents. The additional conditions of approval include requirements concerning (1) restrictions against the use of blasting; (2) agreements on the siting of equipment staging on the project site; (3) use of project security and fencing during construction; (4) the use of truck covers; and (5) daily cleanup of any hauling debris along the route. These additional conditions of approval are attached hereto as **Exhibit A.**

Again, while the issues raised in these appeals do not form a basis for the City Council to reverse the BBSC's approval, the applicant understands the concerns of the community and is willing to accept these further conditions of approval in an effort to be a good neighbor. These conditions are far more protective and onerous than the City requires for much bigger hauls on even smaller hillside streets. There is absolutely no evidence that the skilled haulers and flag attendants will not be able to safely handle and manage the approved route as they do throughout the City a daily basis. Accordingly, we request that the City Council deny both appeals, and uphold the BBSC's approval subject to the additional conditions of approval requested by Council District 4.

Thank you in advance for your consideration. We will be in attendance at the upcoming hearing to respond to any questions you may have concerning this project or the conditions of approval included in the BBSC's approval.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.F.F.', likely representing Daniel F. Freedman.

BENJAMIN M. REZNIK and  
DANIEL F. FREEDMAN of  
Jeffer Mangels Butler & Mitchell LLP

BMR:dff  
Enclosure

cc: Via E-mail:  
Julia Duncan, Planning Deputy, Council District 4

# **EXHIBIT A**

**Applicant hereby agrees to comply with the following additional conditions of approval:**

1. Detonation of explosives or other blasting devices shall be prohibited.
2. To the maximum extent possible staging/material and equipment storage areas as shown on Sheet A 2.10 dated 05/25/17 shall be relocated adjacent to the northerly property line of lot 96 (abutting 2929 Glendower Ave).
3. Fencing with a minimum height of 8 feet covered with tarps shall be installed along the westerly and southerly property lines.
4. Condition No. 4 (General Conditions) shall be revised to require all trucks be covered once loaded and when exiting the site
5. Use flag attendants for deliveries of equipment or materials · Notify the immediate neighbors 48 hours in advance when trucks will be delivering concrete to the subject property