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Planning and Land Use Management
Committee
Los Angeles City Hall
200 N. Spring Street, Room 340
Los Angeles, California 90012

Re: Haul Route Appeal 1104 North Tigertail Road
Council File No. 18-0863
Board File No. 180023
ENV-2018-835-CE

Dear Chairman Huizar:

We are the attorneys for BW Partners, II, LLC, the owner of the above-referenced property (hereinafter, the "Owner"). On August 28, 2018, after a full hearing, the Board of Building and Safety Commissioners (the "Board") granted Owner a haul route permit to export 3,000 cubic yards of earth from 1104 N. Tigertail Road (the "Project"). The issued permit is subject to forty (40) conditions of approval, including thirteen conditions that are specific to the Project. On September 7, 2018, Kate Blackman, Cody Horn, Melanie Regberg, and Mitchell Reiner filed an appeal from that decision. In their September 7, 2018 appeal letter, appellants seek to overturn the Board's approval based on the following arguments: (1) that the Project, a single family home, is not exempt under CEQA despite CEQA's exemption for single family homes; (2) the location of the subject property warrants reversal; (3) the cumulative impact of successive projects allegedly creates a safety hazard to residents; and (4) the Project will have a significant effect on the environment. (See Sept. 7, 2018 Appeal Letter.) As addressed below, each of these arguments is meritless.

It is beyond reasonable dispute that the Project is categorically exempt under CEQA. The Project involves construction of a two-story, single family residence on a site where there is already a single family residence. Nothing about the Project takes it outside CEQA's single family home exemption. It is in an urbanized area that is zoned RE15. The Residential Floor Area of the Project is less than the amount allowable for the site, and the Project is below the threshold criteria for preparation of a traffic study. Moreover, the concerns raised by Appellants

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are more aptly addressed by the Board's various Regulatory Compliance Measures (RCMs) rather than by further environmental review. Most notably in this regard, the Owner has already gone through the City's process of submitting a Geology and Soils Report to the Department of Building and Safety, obtained approval, and is complying with the conditions of approval. The appellants do not explain why their unsubstantiated fears of slope failure should be given more weight than the opinion of professional engineers.

In short, there is no legal or factual basis for disturbing the Board's decision. The Board correctly determined that the Project is categorically exempt under CEQA. The City's RCMs more than adequately address all of the appellants' concerns. Additional environmental review would serve no legitimate purpose.

Summary of Relevant Facts

In its August 28, 2018 decision, the Board approved the Owner's haul route application to export 3,000 cubic yards of earth from the Project site, which is a 1.14 acre property. Further, the Board adopted the determination by the Department of City Planning ("DCP") that the Project, a new construction infill development of a single family home was exempt from CEQA. The DCP found in the Notice of Exception ("NOE") that the "project qualifies for a Categorical Exemption pursuant to section 15332 of the State California Environmental Quality Act (CEQA) Guidelines under Class 32, and Article III, Section 1, Class 3, Category 1, and Class 3, Category 6, of the City CEQA Guidelines (Case No. ENV-2018-835-CE)."

In making this determination the DCP wrote in its June 20, 2018 Justification for Project Exemption that:

As a project which is characterized as in-fill development and new construction, the project qualifies for qualifies for the Class 3, Category 1 and Class 32 Categorical Exemptions.

The site is zoned RE15-1-H and has a General Plan Land Use Designation of Very Low II Residential. As shown in the case file, the project is consistent with the applicable Brentwood- Pacific Palisades Community Plan designation and policies and all applicable zoning designations and regulations. The subject site is wholly within the City of Los Angeles, on a site that is approximately 1.14 acres. Lots adjacent to the subject property are developed with single-family dwellings. The site is previously disturbed and surrounded by development and therefore is not, and has no value as, a habitat for endangered, rare or threatened species. There are no protected trees on the site as described within the Tree Letter, dated May 28, 2018 by Michael O'Brien.

The project will be subject to Regulatory Compliance Measures (RCMs), which require compliance with the City of Los Angeles Noise Ordinance; pollutant discharge, dewatering, stormwater mitigations; and Best Management Practices for stormwater runoff. These RCMs will ensure the project will not have significant impacts on noise and water. Furthermore, the project does not exceed the threshold criteria established by LADOT for preparing a traffic study. Therefore, the project will not have any significant impacts to traffic. Interim thresholds were developed by DCP staff based on CalEEMod model runs relying on reasonable assumptions, consulting with AQMD staff, and surveying published air quality studies for which criteria air pollutants did not exceed the established SCAQMD construction and operational thresholds. The project site will be adequately served by all public utilities and services given that the construction of a new single-family dwelling will be on a site which has been previously developed and is consistent with the General Plan. Therefore, the project meets all of the Criteria for the Class 32.”

1) The Board Correctly Found that the Project is Categorically Exempt from CEQA

The Board determined that the Project is subject to a categorical exemption under Class 3, Category 1 of the City’s CEQA Guidelines, as well as Class 3, Category 6. These exemptions apply, respectively, to “[s]ingle family residences not in conjunction with the building of two or more units” and “[a]ccessory (appurtenant) structures, including garages...” The Board’s determination was undeniably correct because the Project involves construction of one, and only one, single family residence, which will replace an existing single family residence on the site. It is not part of a larger development undertaken in conjunction with other single family residences (even though up to three single family residences may be constructed under the Category 1 exemption). *See* 14 Cal. Code Regs, section 15303. As there is no dispute that the Project is a single family home, all of the evidence before the Board pointed towards the clear applicability of this categorical exemption. Any other interpretation of the evidence would have been arbitrary and capricious.

When evidence shows that a project falls into one of the categories for a categorical exemption from CEQA, “such as reports or other information submitted in connection with the project, and the agency makes factual determinations as to whether the project fits within an exemption category, [courts] determine whether the record contains substantial evidence to support the agency’s decision.” (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 694.) Therefore, the decision regarding whether the Project at issue in this case falls within the CEQA Guidelines is governed by the very deferential substantial evidence standard of review. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817 [Courts must affirm an agency’s factual determination that a project fits

within an exemption category as long as its determinations are supported by substantial evidence].)

In other words, to overturn the Board's decision, appellants must show that there is no substantial evidence supporting the City's determination that the Project, a single-family home, falls within the categorical exemption in the CEQA Guidelines for single-family homes. This, of course, is impossible, as the record repeatedly confirms, and appellants do not dispute, that the Project is a single-family home.

Unable to challenge the applicability of the CEQA exemption on its own terms, appellants instead argue that the Project is not a "small structure," and they invoke the Project's square footage. However, this vague contention is rooted in appellants' subjective perceptions of the Project, rather than in any objective criteria in the City's Zoning Code. The Project falls well under the maximum buildable area for the lot, which is 1.14 acres and zoned RE15-1H. Nonetheless, even if appellants' characterization of the Project as "not small" is accepted for the purposes of argument, there is no legal authority that appellants have cited to, or any that the Owner is aware of, by which a single family residence can fall outside the single family residence CEQA exemption on the basis of its square footage. Accordingly, there is no basis for the City to disturb the Board's finding that the single family residence exemption to CEQA applies.

Next, appellants argue, without any supporting evidence, that the Project will have a "significant environmental impact not only on the neighboring houses but the natural surroundings and the wildlife it inhabits." (Appeal Letter, Dated September 7, 2018.) This is contrary to the DCP's findings in its June 20, 2018 Justification for Project Exemption that:

Lots adjacent to the subject property are developed with single-family dwellings. The site is previously disturbed and surrounded by development and therefore is not, and **has no value as**, a habitat for endangered, rare or threatened species. (emphasis added)

Furthermore, "complaints, fears, and suspicions about a project's potential environmental impact do not constitute substantial evidence." (*Joshua Tree Downtown Bus Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690; *San Joaquin Raptor/Wildlife Rescue Ctr. V. County of Stanislaus* (1996) 42 Cal.App.4th 608, 624-625.) Any environmental impact must affect the environment of persons in general, not on only some particular persons. (*Santa Monica Chamber of Commerce v City of Santa Monica* (2002) 101 Cal.App.4th 786, 799.) This appeal is based on the unfounded complaints, fears and suspicions of a small segment of the neighborhood, not on evidence. Therefore, the City should defer to the NOE and DCP's finding that the Project is categorically exempt from CEQA and will have no impact on the environment because it is replacing an existing single family home.

Finally, appellants express fears regarding slope failures. However, these fears should also be disregarded as a legal matter because there is no evidence in the record to support them. The DCP notes that the current haul route will not have a significant impact on slope due to the RCMs imposed by City of Los Angeles that regulate the grading and construction of projects in these particular types of projects. The Owner has submitted Geology and Soils Report to the Department of Building and Safety (LADBS), and received a Geology and Soils Report Approval Letter, issued by LADBS on October 25, 2017 (Log #100269), which details conditions of approval that must be followed to reduce any impact on surrounding properties. These RCMs have been historically proven to work to the satisfaction of the City Engineer.

As the appellants have not shown that the Project will result in any significant impact on the environment and have no basis to challenge the application of the CEQA exemption for single family residences, the City should reject the first argument advanced by appellants in support of the appeal.

2) The Location of the Project Does not Warrant a Reversal of the Board's Decision

Nothing about the location of the Project warrants a reversal of the Board's Decision. Single family residences have been built in this location for decades, including the single family residence that is currently on the site of the Project and the single family residences that each of the appellants inhabit. The only evidence in the record concerning the location of the Project fully supports the Board's decision. As the DCP stated, the "project proposes one single-family dwelling in an area zoned and designated for such development. Adjacent lots are similarly zoned RE15-1-H or are zoned RE40-1-H and developed with single-family-dwellings or are vacant, and the subject site is of a similar size and slope to nearby properties." Thus, since the project site is zoned for a single family homes, and is replacing an existing single family home, the appellants' arguments should be disregarded as unsupported by evidence.

Insofar as appellants express concern about the narrowness of the road leading up to the Project site and the traffic impact of the hauling route, the Board has accounted for this by specifically restricting hauling operations to the hours between 9:00 a.m. and 3:00 p.m. As to the possibility that residents may wish to flee the area in an emergency, this is not a basis for banning trucks from the street. Withholding permits based on those types of assumptions would paralyze development all over the City.

Therefore, the City should reject the second argument advanced by appellants in support of the appeal.

3) Cumulative Impact Does Not Warrant Reversal of the Board's Decision.

Appellants have not demonstrated any cumulative impact warranting reversal of the Board's decision. The Project is replacing an existing single family home. The fact that an unspecified handful of other lot owners at different places in the neighborhood may also be

engaging in some form of construction on their premises would not be out of ordinary if true. But more importantly, it is not the type of event contemplated as cumulative impact under the City's CEQA Guidelines, which holds that "The categorical exemption may not be used when the cumulative impact of successive projects of the same type in the same place may be significant. For example, annual additions to an existing building under Class 1." The DCP was again clear and unequivocal about this issue when it stated that "There is not a succession of known projects of the same type and in the same place as the subject project." There is simply no evidence to support a finding of cumulative impact under the CEQA Guidelines to reverse the Board's Decision.

Therefore, the City should reject the third argument advanced by appellants in support of the appeal.

4) The Project will not have Significant Effect on the Environment

The fourth basis for the appeal is not spelled out in detail and appears to overlap with the other bases. Appellants' argument that the Project will have a significant effect on the environment is, as discussed above, not supported by evidence. In order to overturn the Board on this issue, the appellants must (1) provide substantial evidence that some feature of the Project makes it unusual, distinguishing it from the features of other projects that fall in the CEQA Guideline section 15303(a) exempt class of single-family residences, and (2) show that there is reasonable possibility of a significant effect to the environment due to this unusual feature. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 ("Berkeley Hillside")

They have not done this. As the DCP stated, there is nothing unusual about this Project as it is a by-right, new single family construction in an area zoned for single family housing. Further, the Project's Residential Floor Area is less than the RFA allowed by the Los Angeles Zoning Code. As such, the City should reject the fourth argument advanced by appellants in support of the appeal, deny the appeal in its entirety, and adopt the Board's August 28, 2018 decision to approve the haul route.

Respectfully submitted

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