

ARMBRUSTER GOLDSMITH & DELVAC LLP

LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

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January 14, 2019

VIA E-MAIL TO CITY CLERK'S OFFICE

Chairman Marqueece Harris-Dawson and
Honorable Members of the City Council
Planning & Land Use Management Committee
City Council of Los Angeles
200 North Spring Street, Room 340
Los Angeles, CA 90012

Sharon.Dickinson@lacity.org
Clerk.plumcommittee@lacity.org

Re: [Response to the Appeal of the Board of Building and Safety Commission's Haul Route Approval at 11600, 11601 and 11610 Dunstan Way; Council File #18-1217](#)

Dear Honorable Chairman Harris-Dawson and PLUM Committee Members:

We represent 11601 Dunstan Partners LP (the "Applicant"), the owner of a flag lot property located at 11600, 11601 and 11610 West Dunstan Way (the "Project Site"). The Applicant has proposed to construct a four-story, 54-unit apartment building at the Project Site (the "Project"). The Project does not require any discretionary entitlements other than haul route approval for the excavation and export of 33,120 cubic yards of soil. Although this is essentially a "by-right" development, the Applicant has conducted extensive public and community outreach meetings. The Project is supported by immediate neighbors and the Brentwood Community Council ("BCC") and the Brentwood Homeowner's Association ("BHA") have both acknowledged that its previously expressed concerns have been largely assuaged.

The Board of Building & Safety Commission (the "Board") first approved a haul route for the Project on October 4, 2016 (the "2016 Haul Route") and adopted a Mitigated Negative Declaration ("MND") (No. ENV-2016-457-MND) in compliance with the California Environmental Quality Act ("CEQA"). The 2016 Haul Route was appealed to the City Council on October 11, 2016. The City Council denied the appeal on November 8, 2016. On December 6, 2016 a petition for writ of mandate and complaint for damages was filed in the case entitled *Harel Simon v. City of Los Angeles et. al.* (Los Angeles Superior Court Case No. BS166574) challenging the 2016 Haul Route and the MND. On March 24, 2017 the case was dismissed

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with prejudice. No further challenges to the MND were filed and all statute of limitations periods have expired.

The 2016 Haul Route subsequently expired as a result of Applicant's inability to obtain a grading permit within twelve months from the approval, as required by the haul route conditions. As a result, the Applicant filed a new haul route application requesting the exact same haul route with the identical amount of excavation and soil export (33,120 cubic yards) as the 2016 Haul Route (the "2018 Haul Route"). No changes have been made to the Project since approval of the 2016 Haul Route and adoption of the MND.

On December 4, 2018 the Board approved the 2018 Haul Route. The 2018 Haul Route was subsequently appealed to the City Council (the "Appeal") by the Advocates for the Environment on behalf of its client the Brentwood Environmental Safety Coalition (the "Appellant").

The Appeal raises various erroneous claims in an attempt to overturn the 2018 Haul Route approval and stop the Project. Responses to each of the Appeal allegations are provided below.

I. The Applicant Enjoys Access Rights to the Adjacent Private Street.

The Project Site is a flag lot that is adjacent to Dunstan Way, an approved private street. The Appellant cites a violation of LAMC Section 91.7006.6 which requires the consent of an adjacent property owner when excavation or fill requires "entry" onto an "adjacent property." This provision provides the City with a mechanism to verify that Applicants maintain necessary access and entry rights to the extent a haul route encroaches onto adjacent property. However, the Appellant stretches the meaning of this Code provision to suggest the Applicant must also obtain the affirmative consent of the adjacent Homeowners Association to use the private street for hauling purposes.

LAMC Section 18.01 defines a "Private Street" as:

"A parcel of land not dedicated as a public street over which a private easement for road purposes has been granted to the owners of property contiguous or adjacent thereto which intersects or connects with a public street, or another private street, and the instrument creating same has been duly recorded or filed in the office of the Recorder of Los Angeles, and which has been determined by the Director to be adequate for the access and for the purposes defined in this article."

The Project Site is contiguous and adjacent to Private Street #172, as shown on Tract Map No. 39860, approved by the City and recorded with the County. Thus, by definition, the Applicant maintains the ongoing consent and right to utilize the private street for ingress and egress, including for haul route excavation and fill purposes. (See correspondence from Tony Wong,

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registered professional engineer dated January 11, 2019 confirming Applicant's access rights over the private street, as well as copy of Tract Map #39860 and ALTA Survey, attached as Exhibit A). Accordingly, the Applicant has provided clear evidence of its access rights over Dunstan Way to the Project Site. Appellant's suggestion that the HOA may veto the Applicant's legal easement to use the private street misconstrues the intent and meaning of LAMC Section 91.7006.6. That provision is clearly intended to prevent the unauthorized encroachment of hauling activity onto adjacent property – as opposed to empowering a neighbor to abrogate recorded easement rights over a private street.

II. The Project Does Not Require Site Plan Review Approval.

LAMC Section 16.05 requires discretionary Site Plan Review (“SPR”) approval for, among other things, a multi-family housing project that “creates, or results in an increase of, 50 or more dwelling units...” Thirty five existing units would be demolished prior to construction of the 54-unit Project. Thus, the Project results in a net increase of only 19 units, and SPR is not required.

Appellant argues that demolition of the 35 units is irrelevant for purposes of SPR and the approval is required because the Project itself contains over 50 units. The issue of whether Site Plan Review applies to gross or net new development is long settled. In 2000, LADBS issued a building permit for a 69,330 square-foot expansion of Public Storage's Glassell Park facility. LADBS did not require Site Plan Review because the net increase in floor area after factoring in the demolition of old structures was less than 40,000 square feet (the Site Plan Review threshold in effect at the time). Then-Councilwoman Jackie Goldberg appealed LADBS's issuance of the building permit, asserting that LADBS “erred by calculating net changes in square feet -- giving ‘credit’ for demolition of old structures and addition of new construction -- and hence not subjecting the project to the site plan review provisions.” After the Board of Building & Safety Commissioners rejected the appeal, the Councilwoman appealed that determination to the Zoning Administrator, who found:

It is the net increase in floor area which triggers the requirement for site plan review. That is, there is a credit due for the demolition of floor area related to the new construction. **This has been a consistent interpretation of this ordinance by the Planning Department.**^[1] (Emphasis added.)

The Zoning Administrator's determination was subsequently upheld by the City Planning Commission (“CPC”).^[2] The CPC has also upheld this same interpretation for residential

^[1] See September 21, 2000 Zoning Administrator determination letter, ZA No. 2000-0577 (A).

^[2] See January 17, 2001 City Planning Commission determination letter, ZA No. 2000-0577 (A) and 2000-1110 (A).

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projects, when it found that Site Plan Review was not required for a 95-unit residential project that did not result in the increase of 50 or more units:

The Applicant originally filed for Site Plan Review findings when the Project consisted of a 140-unit residential project. At that time the project would have resulted in an increase of 56 units over the existing 84 units on the site. The current project is for 95 residential units, 11 more than currently on the site. Site Plan review is only required when a project proposes 50 or more residential units.^[3]

Based on the Planning Department's longstanding interpretation of the ordinance as reflected in these prior cases, Site Plan Review is not required as the Project only results in a net increase of 19 units.

III. The Project Building Permit Has Not Expired.

Appellant also alleges that the Project's building permit application (No. 13010-10000-04660) has expired because the Building & Safety Department did not issue a permit within 18 months, and therefore the Project must be constructed in accordance with the 2014 rather than the 2011 Building Code. First, this argument is not germane to the actual haul route approval or its conditions and is therefore not an appropriate basis for an appeal. Second, LAMC Section 98.0603 authorizes the Department to grant extensions to the 18-month plan check period if "unusual circumstances or conditions" warrant additional time. On December 18, 2018, the Department granted its most recent plan check extension, expressly allowing the permit to be issued pursuant to the 2011 Los Angeles Building Code, Disabled Access Code (Title 24) and Green Building Code. The Department found "extenuating circumstances" resulting from ongoing DWP pole undergrounding, the expiration of the 2016 Haul Route (and the subsequent appeal of the 2018 Haul Route) and the Grading Department's technical review of a new demolition and grading conditions. Thus, the Applicant's plan check period has been properly extended in accordance with the Municipal Code, and the current plans designed in compliance with the 2011 Building Codes remain valid and active.

IV. The 2016 Haul Route MND is Presumed Valid for All Purposes and the City Properly Concluded Subsequent Environmental Review Is Not Required.

As stated above, the MND adopted in conjunction with the 2016 Haul Route approval is beyond the legal challenge period and is therefore "deemed final and conclusive on all persons." (See Cal. Pub. Res. Code §21080.1(a)). Not a single change was made to the Project, the haul

^[3] See May 7, 2009 City Planning Commission determination letter, CPC-2007-1998-ZC-HD-BL-SPR.

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route or the amount of soil excavation and/or export since the MND became final. In approving the 2018 Haul Route the Board therefore properly relied on the previously adopted 2016 MND and made specific findings pursuant to California Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15164 that no subsequent environmental review is required. (See Board Action letter and adopted CEQA Guideline Section 15162 findings, attached as Exhibit B). Importantly, the City's subsequent CEQA review determination and findings are afforded the deferential "substantial evidence" rather than the more lenient "fair argument" standard of review. (*See Committee for Re-Evaluation of the T-Line Loop*, 6 Cal.App. 5th 1237, 1251 (2016) stating that "It is well established that under section 21166 we apply the deferential substantial evidence test in reviewing the determination that no further CEQA review was required...")

The Appellant has provided no evidence or basis to challenge the City's determination that no subsequent environmental review was required for the 2018 Haul Route approval. This is not surprising given the 2018 Haul Route approval is identical in every respect to the 2016 Haul Route analyzed in the previously adopted MND.

Without any factual basis to challenge the City's 15162 findings in this case, the Appellant accuses the City of CEQA "project-splitting" by failing to analyze allegedly required Site Plan Review and tract map entitlements, as well as potential "street improvements" to Dunstan Way alluded to in a 2016 Department of Transportation (LADOT) form. As stated above, SPR is not required because the Project does not result in a net increase of more than 50 units. A tract map is similarly not required because the Applicant intends to rent rather than sell the Project units. Therefore, there would be no reason to reference let alone analyze either of these entitlements. As for the alleged "street improvements," none are actually required. As a goodwill gesture to the neighbors, the Applicant voluntarily agreed to repave and improve a portion of Dunstan Way – which is currently in disrepair. This volunteered community benefit in no way results in unstudied CEQA impacts and is not a proper basis for challenging the City's finding that no further environmental review is required to approve the 2018 Haul Route.

V. The City Properly Noticed the Hearing.

Contrary to Appellant's claim, notice was properly and conspicuously posted on the Project Site more than five days before the public hearing in accordance with LAMC Section 91.7006.7.5(5). (See verification of public posting, attached as Exhibit C). Further, the radius maps and labels were updated with current information and the public hearing and notice mailed to over 200 persons and addresses located within 300 feet of the Project Site. Appellant's vague and unsubstantiated claim that "at least one adjacent owner" didn't receive notice – without actually providing a name or address – does not constitute credible evidence of defective notice.

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VI. The Haul Route Does Not Endanger Health, Safety & Welfare.

Without providing any facts, evidence or substance, Appellant baldly states that the 2018 Haul Route would “endanger the health, safety and welfare of nearby residents.” This claim is utterly meritless. As shown by the now final and conclusive 2016 MND, the Project would not result in any environmental impacts that cannot be mitigated to a level of less than significant. The Project has not changed in any way. The Project will result in the construction of 54 new, quality residential units and Dunstan Way will be repaved and upgraded for the benefit of the adjacent property owners. The Project will be a positive addition to the neighborhood and no evidence in the record supports an allegation of health and human safety risks to the public.

In closing, the 2018 Haul Route is identical to the previously approved 2016 Haul Route, resulting in the same amount of soil excavation and export. The Project has not changed in any respect. The Applicant enjoys easement rights over Dunstan Way, the adjacent private street, and therefore has legal consent and rights to use the roadway for access and hauling purposes. The Project does not require discretionary Site Plan Review or a tract map as alleged by the Appellant, and is completely “by-right” other than the requested haul route permit. As permitted by the LAMC, the Department of Building & Safety has authorized multiple plan check extensions – most recently in December 2018 that expressly allow use of the 2011 Building Code. The MND approved in conjunction with the 2016 Haul Route is legally valid and conclusive, and the City properly determined that no subsequent environmental review is required under Public Resources Code Section 21166 and CEQA Guidelines Section 15162. The Project will be a benefit to the neighborhood and all impacts would be mitigated as indicated in the 2016 MND. The Board hearing was properly noticed and the City approved the 2018 Haul Route in conformance with all LAMC procedural requirements.

We therefore respectfully request that you deny the Appeal, uphold the 2018 Haul Route and re-affirm the Board’s finding that no subsequent environmental review is required for the Project. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Rand", with a long horizontal flourish extending to the right.

Dave Rand

cc: Chris Liebes, Applicant
Len Nguyen, CD-11

EXHIBIT A

January 11, 2019

Mr. Chris Liebes
11601 Dunstan Partners LP
P.O. Box 491485
Los Angeles, CA 90049

Subject: Legality of Access for 11600 Dunstan Way
APN 4401-029-081

Dear Mr. Liebes,

Per your request, I have reviewed the title documents, maps, and report you sent regarding the legality of access to the project site (11600 Dunstan Way). The title documents provide ingress/egress easements from the neighboring properties at 514 S. Barrington Avenue and 530 S. Barrington Avenue.

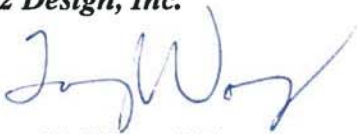
Further, in 1984, Tract Map No. 39860 was filed and approved by the City of Los Angeles and County of Los Angeles. The tract map was recorded with a private street to the project site. Ingress/egress was affirmed by the ALTA/ACSM Survey prepared by Lawrence J. Schmahl in December 2007 and updated in June 22, 2016.

A private street by definition is a parcel of land connected to a public street for road purposes and has been granted to the owners of adjacent contiguous property. This allows access for ingress and egress for the movement of goods, services, vehicles, and people. This would include access for any hauling or construction related vehicles needed to construct your proposed multi-family development project and was approved by the City of Los Angeles as the project haul route on December 4, 2018.

Should you require any additional analysis or other services, please don't hesitate to contact me.

Best regards,

W2 Design, Inc.



Tony K. Wong, PE
Principal Engineer



cc: Mr. Dave Rand, Armbruster, Goldsmith & Delvac, LLP
Mr. Steve Nakada, Nakada Partners
Mr. James Suhr, Suhr and Associates

SCALE: 1" = 40'

TRACT N

IN THE CITY
STATE OF

FOR CONDO

BEING A SUBDIVISION OF
ACRES, PER MAP RECORD
OF MAPS, RECORDS OF S

MAP & DEDIC

OWNER'S CERTIFICATE:

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF OR ARE INTERESTED IN THE LAND INCLUDED WITHIN THE DISTINCTIVE BORDER LINES, AND WE CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION; AND WE HEREBY DEDICATE TO THE PUBLIC USE THE STREETS, HIGHWAYS, AND OTHER PUBLIC WAYS, SHOWN ON SAID MAP WITHIN SAID SUBDIVISION. AS A DEDICATION TO PUBLIC USE, WE HEREBY ABANDON AND WAIVE IN FAVOR OF THE PUBLIC, AS A COVENANT RUNNING WITH THE LAND AND BINDING UPON OUR HEIRS, SUCCESSORS, AND ASSIGNS, ALL RIGHTS OF VEHICULAR INGRESS AND EGRESS FROM LOT 1 TO BARRINGTON AVENUE EXCEPT FOR ONE DRIVEWAY AT THE MOST SOUTHERN END OF THIS SUBDIVISION.

Bernard S. Rogow
BERNARD S. ROGOW, OWNER

Florence K. Rogow
FLORENNE K. ROGOW, OWNER

AMERICAN SAVINGS AND LOAN ASSOCIATION,

SUCCESSOR BY NAME CHANGE TO AMERICAN SAVINGS, A FEDERAL ASSOCIATION, BENEFICIARY UNDER DEED OF TRUST RECORDED MAY 17, 1983 AS INSTRUMENT NO. 83-550549, OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY.

Susan L. Schumacher
SUSAN L. SCHUMACHER
ASSISTANT VICE PRESIDENT

Tom K. Anderson
TOM K. ANDERSON
ASSISTANT SECRETARY

PC INVESTMENTS, INC. AND PACCAL INVESTMENTS, INC.
OPTIONEE UNDER OPTION RECORDED FEBRUARY 10, 1984 AS INSTRUMENT NO. 84-182189, OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY.

PC INVESTMENTS, INC.

Paul W. Sp...

Paul W. Sp...

SCALE: 1" = 40'

TRACT N

IN THE CITY
STATE











THE SIGNATURES OF GUY O. SWARTZ AND GEORGIA C. SWARTZ, HOLDERS OF AN EASEMENT FOR INGRESS AND EGRESS PURPOSES PER DEED RECORDED IN BOOK 44779, PAGE 64 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY, HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (C) (1) OF THE SUBDIVISION MAP ACT; THEIR INTERESTS ARE SUCH THAT THEY CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE LOS ANGELES CITY COUNCIL.

THE SIGNATURES OF HAROLD SPRINGER AND FRANCES SPRINGER, HOLDER OF AN EASEMENT FOR ROADWAY AND PUBLIC UTILITY PURPOSES, PER DEED RECORDED IN BOOK D1465, PAGE 448 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY, HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (C) (1) OF THE SUBDIVISION MAP ACT; THEIR INTERESTS ARE SUCH THAT THEY CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE LOS ANGELES CITY COUNCIL.




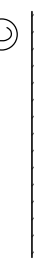
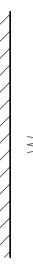
THE SIGNATURES OF ALADIN OIL CORPORATION, A CALIFORNIA CORPORATION, THEIR SUCCESSORS OR ASSIGNS, OWNERS OF OIL AND MINERAL RIGHTS BY LEASE RECORDED IN BOOK M-1536, PAGE 828 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY, HAS BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (C) (3) OF THE SUBDIVISION MAP ACT INASMUCH AS SAID SIGNATURE IN NOT REQUIRED BY THE LOS ANGELES CITY COUNCIL.

THE SIGNATURES OF ALBERT F. MARINUCCI AND VIRGINIA MARINUCCI, HOLDERS OF AN EASEMENT FOR INGRESS AND EGRESS PURPOSES, PER DOCUMENT RECORDED OCTOBER 22, 1984 AS INSTRUMENT NO. 84-1259135 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY, *HAVE BEEN* OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (C) (1) OF THE SUBDIVISION MAP ACT; THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE LOS ANGELES CITY COUNCIL.

LEGEND:

- A.C. _____
- BW _____
- CONC. _____
- E _____
- FF _____
- FL _____
- N _____
- S _____
- TC _____
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- EUC. _____
- X—X—X—X— _____
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- ASPHALT CONCRETE
- BACK OF WALK
- CONCRETE
- EAST
- FINISHED FLOOR
- FLOWLINE
- NORTH
- SOUTH
- TOP OF CURB
- TOP OF GRATE
- WEST
- BUILDING LINE
- CENTERLINE
- CRASHPOST
- DRAIN GRATE
- EDGE OF PAVEMENT
- ELECTRIC METER
- EUCALYPTUS TREE
- FENCE, CHAIN-LINK
- FENCE, WOOD
- GAS LINE
- GAS METER
- GUY WIRE

- GREV. ROBUSTA _____
- M.O. _____
-  _____
-  _____
-  _____
-  _____
-  _____

- GREVILLEA ROBUSTA TREE
- MOCK ORANGE TREE
- OVERHEAD POWER LINE
- POWER POLE
- PROPERTY LINE
- SEWER CLEANOUT
- WALL
- WATER LINE

EASEMENT NOTES:

- ① INGRESS AND EGRESS AND UNDERGROUND PUBLIC UTILITY EASEMENTS AFFECTING THE FOLLOWING MATTERS AFFECT PARCEL A:
 - ③ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: ROADWAY AND PUBLIC UTILITIES RECORDING NO: IN INSTRUMENT NO. 2260 OF OFFICIAL RECORDS AFFECTS: A PORTION OF PARCEL 2
 - ④ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: PUBLIC UTILITIES RECORDING DATE: JUNE 13, 1952 AS INSTRUMENT NO. 2260 OF OFFICIAL RECORDS AFFECTS: A PORTION OF SAID LAND
 - ⑤ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: INGRESS AND EGRESS FOR DRIVEWAY RECORDING NO: IN BOOK 44779, PAGE 67, OF OFFICIAL RECORDS AFFECTS: A PORTION OF SAID LAND
 - ⑥ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: INGRESS AND EGRESS FOR DRIVEWAY RECORDING NO: IN BOOK 44779, PAGE 64, OF OFFICIAL RECORDS AFFECTS: PARCEL 2
 - ⑦ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: INGRESS AND EGRESS AND UNDERGROUND PUBLIC UTILITY EASEMENTS AFFECTING THE FOLLOWING MATTERS AFFECT PARCEL A:
 - ⑧ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: INGRESS AND EGRESS RECORDING NO: IN BOOK 47973, PAGE 388, OF OFFICIAL RECORDS AFFECTS: A PORTION OF SAID LAND
 - ⑩ EASEMENT(S) FOR THE PURPOSE(S) SHOWN BELOW AND RIGHTS PURPOSE: PUBLIC UTILITIES RECORDING DATE: AUGUST 22, 1957 RECORDING NO: 2542, OF OFFICIAL RECORDS AFFECTS: A PORTION OF SAID LAND

THE FOLLOWING MATTERS AFFECT PARCEL B:

EXHIBIT B

BOARD OF
BUILDING AND SAFETY
COMMISSIONERS

VAN AMBATELOS
PRESIDENT

E. FELICIA BRANNON
VICE PRESIDENT

JOSELYN GEAGA-ROSENTHAL
GEORGE HOVAGUIMIAN
JAVIER NUNEZ

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

DEPARTMENT OF
BUILDING AND SAFETY
201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

FRANK M. BUSH
GENERAL MANAGER
SUPERINTENDENT OF BUILDING

OSAMA YOUNAN, P.E.
EXECUTIVE OFFICER

December 6, 2018

BOARD FILE NO. 180126
C.D.: 11 (Councilmember Mike Bonin)

11601 Dunstan Partners LP
C/O Moss and Company
15300 Ventura Boulevard, Suite 405
Sherman Oaks, CA 91403

JOB ADDRESS: 11601 WEST DUNSTAN WAY
A.K.A.: 11600 WEST DUNSTAN WAY
TRACT: WESTGATE ACRES

The Board of Building and Safety Commissioners, at its meeting of December 4, 2018, gave consideration to the application by Chris Parker, to export 33,120 cubic yards of earth from the above-referenced property.

The Board took the following actions:

1. FIND that after consideration of the whole of the Administrative record the project and the 2018 haul route application were assessed in the previously adopted Mitigated Negative Declaration and pursuant to California Environmental Quality Act guidelines Sections 15162 and 15614, no subsequent Environmental Impact Report, Negative Declaration, or addendum is required.
2. APPROVE the application subject to all conditions specified in the Department's report dated November 28, 2018.

This action becomes effective and final when ten calendar days has elapsed from the date of the Board's action, unless an appeal is filed with the City Council pursuant to Section 91.7006.7.5 of the Los Angeles Municipal Code.

Van Ambatielos, President
BOARD OF BUILDING AND SAFETY COMMISSIONERS

Action By
the BOARD OF BUILDING AND SAFETY
COMMISSIONERS on

NOT VALID WITHOUT STAMP AND SIGNATURE *December 4, 2018*

c: Sr. Grading Inspector V. Mihalev
D. Wallraff
C. Parker
J. Suhr

DEPARTMENT OF
CITY PLANNING

CITY PLANNING COMMISSION

SAMANTHA MILLMAN
PRESIDENT

VAHID KHORSAND
VICE-PRESIDENT

DAVID H. J. AMBROZ
CAROLINE CHOE
RENEE DAKE WILSON
KAREN MACK
MARC MITCHELL
VERONICA PADILLA-CAMPOS
DANA M. PERLMAN

ROCKY WILES
COMMISSION OFFICE MANAGER
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
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KEVIN J. KELLER, AICP
EXECUTIVE OFFICER
(213) 978-1272

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

<http://planning.lacity.org>

October 25, 2018

Applicant/Property Owner
11601 Dunstan Partners, LP
PO Box 491485
LA, CA 90049

Representative
Nakada+Associates
550 S. Hope Street, Suite 1740, Los
Angeles, CA 90071.

Case No.: ENV-2016-457-MND
CEQA: ENV-2016-457-MND
Location: 11601 Dunstan Way
Council District: 11 – Mike Bonin
Neighborhood Council: None
Community Plan Area: Brentwood-Pacific Palisades
Land Use Designation: Medium Residential
Zone: R3-1

California Environmental Quality Act (CEQA) Findings

On October 4, 2016, the Los Angeles Board of Building and Safety Commissioners approved a haul route permit ("2016 Haul Route Permit") and a Mitigated Negative Declaration (No. ENV-2016-457-MND) for the construction of a 54-unit, four story, multifamily structure with two subterranean levels of parking located at 526 and 536 South Barrington Avenue and 11600 West Dunstan Way. The 2016 Haul Route Permit was for excavation and export of 33,120 cubic yards of soil associated with the construction of the Project. The approved Haul Route is as follows:

Loaded Trucks: Exit the Project Site northbound on Barrington Avenue, turn right (east) on Sunset Boulevard, enter northbound I-405 Freeway and continue to the disposal site outside the City limits.

Empty Trucks: From the disposal site, travel southbound on I-405 Freeway, exit onto Wilshire Boulevard off ramp, turn right (west) on Wilshire Boulevard, right (north) on San Vicente Boulevard, right (north) on Barrington Avenue and continue to the Project Site.

On October 11, 2016, the Project Approvals were appealed to the Los Angeles City Council. The City Council denied the appeal on November 8, 2016.

On December 6, 2016, a petition for writ of mandate and complaint for damages was filed in the case entitled, *Harel Simon v. The City of Los Angeles et al.*, Los Angeles Superior Court case number BS166574 (the "Action") challenging the Project Approvals.

On March 24, 2017, the Action was dismissed with prejudice. At that time the MND became a final, legally valid document for CEQA purposes beyond further challenge.

On or about March 24, 2018, the 2016 Haul Route Permit expired; all other Project Approvals, namely the adoption of the MND remain valid and enforceable and beyond legal challenge.

The Applicant has applied for a new haul route permit ("2018 Haul Route Permit") for the same route as set forth above and same excavation and export (33,120 cubic yards of soil). The Project remains the same, and no changes to the Project have been made or are sought.

The Los Angeles Board of Building and Safety Commissioners now finds, based in its independent judgment, and after consideration of the whole of the administrative record, the Project and the 2018 Haul Route Permit were assessed in the adopted MND and pursuant to CEQA Guidelines 15162 and 15164, no subsequent EIR, negative declaration, or addendum is required for approval of the 2018 Haul Route Permit.

15162 findings

- (1) No substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

The 2018 Haul Route Permit is for the exact same Haul Route (route, excavation and export of 33,120 cubic yards of soil) and Project. The Project remains the construction of a 54-unit, four story, multi-family structure with two subterranean levels of parking. The Project and Haul Route were fully considered and analyzed in the Project's previously adopted MND, which concluded that with required mitigation, no significant impacts would result from the implementation of the Project or the issuance of the Haul Route Permit. With the dismissal of the Action, the adoption of the MND is final and beyond legal challenge.

No changes have been made to the uses, height, density, intensity or design of the Project. All mitigation measures previously adopted by the MND would continue to apply to the Project. Therefore, because no changes, substantial or otherwise, have been proposed for the Project or its associated Haul Route, there can be no corresponding new or different environmental effects. As a result, no revisions are required to the previous MND, and no subsequent environmental analysis is required pursuant to CEQA Guidelines Section 15162.

- (2) No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

As noted above, with the dismissal of the Action, the adoption of the MND is final and beyond legal challenge. Since that time, there have been no substantial changes with respect to the circumstances under which the Project is being undertaken. Specifically, there have been no changes to the Haul Route (route and excavation quantity are exactly the same). The exact same zoning, land use, environmental, and public health and safety regulations continue to apply to the Project Site. Previously adopted mitigation measures continue to apply and do not require any changes or modifications. Similarly, there have not been any changes to the existing conditions of the Project Site. Because the circumstances under which the Project would be undertaken have remained exactly the same since the adoption of the MND became final, there can be no new environmental effects, or any increase in the severity of previously identified potentially significant effects.

As a result, no revisions are required to the previous MND, and no subsequent environmental analysis is required pursuant to CEQA Guidelines Section 15162.

(3) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

The Project and the Haul Route were fully considered and analyzed in the Project's previously adopted MND, which concluded that with required mitigation, no significant impacts would result from the implementation of the Project or the issuance of the Haul Route Permit. No changes have been made to the uses, height, density, intensity or design of the Project. Therefore, because no changes, substantial or otherwise, have been proposed for the Project or its associated Haul Route, there can be no corresponding new or different environmental effects. As a result, no revisions are required to the previous MND, and no subsequent environmental analysis is required pursuant to CEQA Guidelines Section 15162.

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;


No changes have been made to the uses, height, density, intensity or design of the Project or to the Haul Route. Therefore, because no changes, substantial or otherwise, have been proposed for the Project or its associated Haul Route, there can be no increase in severity of environmental effects the adopted MND determined could be mitigated to less than significant. As a result, no revisions are required to the previous MND, and no subsequent environmental analysis is required pursuant to CEQA Guidelines Section 15162.

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

In connection with the adopted MND, no mitigation measures were found to be infeasible. Moreover, as described in detail above, since the adoption of the MND, no new potential environmental impacts have been identified that would require new mitigation measures. Accordingly, no further environmental analysis of the Project is required.

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

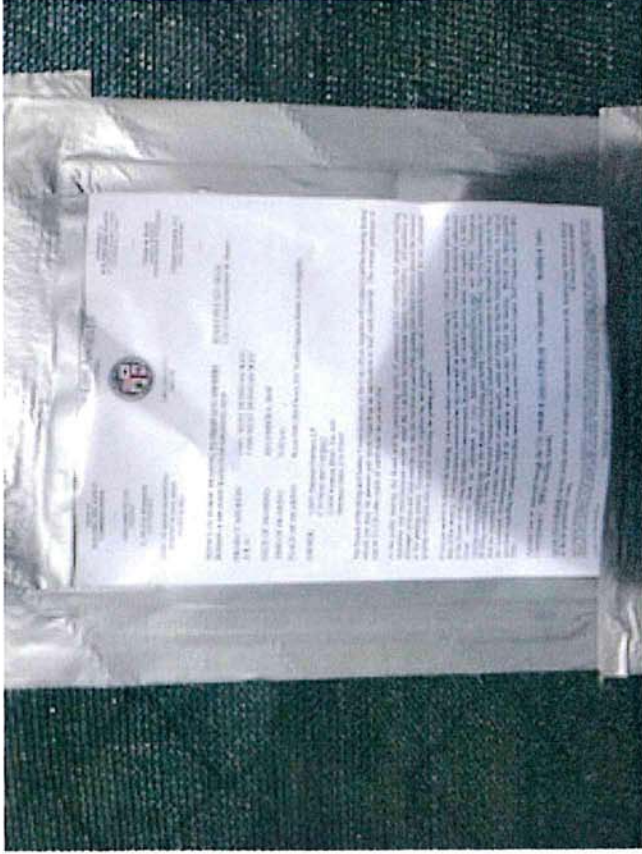
In connection with the adopted MND, certain mitigation measures were adopted and required as Project conditions of approval. As described in detail above, since the adoption of the MND, no new or different potential environmental impacts have been identified, and accordingly, no new or different mitigation measures are required. Therefore, no further environmental analysis of the Project is required.



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EXHIBIT C



11601 Dunstan Way
Haul Route Notification
Date: November 27, 2018