

# LUNA & GLUSHON

ATTORNEYS

16255 VENTURA BOULEVARD, SUITE 1016  
ENCINO, CALIFORNIA 91436  
TEL: 818-907-8755  
FAX: 818-907-8760

Century City Office  
1801 Century Park East, Suite 2400  
Los Angeles, CA 90067

October 16, 2014

Appeal from the Board of Building and Safety Commissioners  
to the Los Angeles City Council

Case No.: Board File Number 140059, ENV-2014-2105-MND

Project Address: 1540 N. Skylark Lane

TYPE OF APPEAL: Appeal of entire Board of Building & Safety  
Commissioners determination, pursuant to *Los Angeles  
Municipal Code* Section 91.7006.7.4 and of the  
adoption of a Mitigated Negative Declaration under  
the California Environmental Quality Act

---

## APPELLANT INFORMATION

Name: Warren J. Kessler and Joan B. Kessler, neighboring property owners  
aggrieved by the determination of the Board of Building and Safety  
Commissioners  
Address: 1501 Skylark Lane, Los Angeles, CA 90069  
Tel. Number: 310-344-6766  
Email: [skessler@kesslerandkessler.com](mailto:skessler@kesslerandkessler.com); [jkessler@kesslerandkessler.com](mailto:jkessler@kesslerandkessler.com)

## REPRESENTATIVE INFORMATION

Name: Robert L. Glushon, Esq.  
Address: 16255 Ventura Blvd., Suite 1016, Encino, CA 91436  
Tel. Number: 818-907-8755  
Email: [rglushon@lunaglushon.com](mailto:rglushon@lunaglushon.com)

---

Final Date to Appeal: October 17, 2014

## JUSTIFICATION/REASON FOR APPEALING

This appeal challenges the October 7, 2014 determination of the Board of Building & Safety Commissioners (“BBSC”) to approve a haul route to export 2,087 cubic yards of earth from 1540 N. Skylark Lane (“the Project”), and the proposed Mitigated Negative Declaration (ENV-2014-2105-MND) (the “MND”). Appellants Warren J. Kessler and Joan B. Kessler, who reside at 1501 Skylark Lane, immediately downslope from the Project, are directly affected by the serious potential and actual impacts of the Project.

The BBSC determination is in error for the following reasons:

### 1. The Proposed MND is Deficient and Inadequate

#### I. Impacts on Geology and Soils are not properly evaluated or mitigated

The Initial Study to the MND identifies the Project as located within the Hollywood Fault Zone, a landslide zone and on lots prone to landslide, lateral spreading, subsidence, liquefaction and collapse with significant differentials in elevation and topography which can result in destabilization of slopes and loss of topsoil. Yet, the measures imposed to mitigate these impacts are boilerplate: conformance with the California Building Code and standards of the Department of Building and Safety (VI-10); the *future* submission of a geological reports and further plans (VI-20; VI-50; VI-60); and conformance with a Geology and Soils Report which, as set forth below, is inadequate itself (VI-20; VI-50; VI-60). Boilerplate mitigation measures are not legally defensible. Likewise, mitigation measures which require the future review of impacts are contrary to law. *Sundstrom v. County of Medocino* (1988) 202 Cal.App.3d 296.

Moreover, the impacts on Geology and Soils are largely based upon an **outdated 2006 Geology & Soils Report**. In 2006, when the Geology & Soils Report was prepared, the single family residence proposed in connection with the Project (a haul route) was approximately 25% smaller than is being proposed. Furthermore, it could not and did not take into consideration the construction of four retaining walls at 1540 N. Skylark Lane in 2007. The report is outdated and cannot be the basis for a 2014 approval of the Project, especially in an area determined to be geologically unstable. Further review is necessary to accurately evaluate the geological impacts of the Project.

## II. Impacts on Aesthetics are not property mitigated

Although the MND identifies potential significant impacts on aesthetics of the existing and natural terrain, it imposes nothing more than non-specific and boilerplate mitigation measures: grading to be kept to a “minimum” (what is a minimum?); natural features to be preserved (which ones?); and compliance with development guidelines (I-30). Again, such mitigation measures are boilerplate and not adequate as a matter of law.

## III. Impacts on Hazards and Hazardous Material and Traffic are not properly mitigated

The mitigation measures imposed to mitigate the impairment of Skylark Lane and interference with emergency access include requirements to submit a future Construction Staging and Parking Plan (VIII-40); a future emergency response plan (VIII-70); and a future parking and driveway plan (XVI-50).

Again, mitigation measures which require the future review of impacts are contrary to law as they fail to incorporate meaningful mitigation measures only available through public review which is the reason for public hearings under the *California Environmental Quality Act*. As such, the mitigation measures are inadequate.

## IV. Impacts on Noise are not property mitigated

Although the MND identifies potential significant impact the increase on noise levels, it imposes nothing more than boilerplate conditions requiring compliance with a noise ordinance and scheduling to avoid operating several pieces of equipment simultaneously (XII-20). Such boilerplate mitigation measures are not adequate as a matter of law. Detailed construction schedules are the only way to meaningfully mitigate the increased noise levels.

### 2. The Board violated the Los Angeles Municipal Code

Pursuant to *Los Angeles Municipal Code Section 97.7006.7.5.5*, the BBSC must deny a haul route application where such will “endanger the public health, safety and welfare”.

As set forth above, the conditions of approval of the haul route are based upon a deficient MND and an outdated 2006 Geology & Soils Report. Here, the Project is located within the Hollywood Fault Zone; a landslide zone; and on lots prone to landslide, lateral spreading, subsidence, liquefaction and collapse with

significant differentials in elevation and topography which can result in destabilization of slopes and loss of topsoil, the approval of the haul route will not endanger the public health, safety and welfare. Based thereon, there are significant potential impacts from the Project and which would in fact endanger the public, especially Appellants Warren J. Kessler and Joan B. Kessler, who reside at 1501 Skylark Lane, immediately downslope from the Project.

Appellants further contend that the adoption of the MND did not comply with all procedural requirements under the *California Environmental Quality Act*.

I certify that the statements set forth above in support of this appeal are true and correct.

Very truly yours,

LUNA & GLUSHON



Handwritten signature of Robert L. Glushon in black ink, written in a cursive style.

ROBERT L. GLUSHON

# CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI  
MAYOR

BOARD OF  
BUILDING AND SAFETY  
COMMISSIONERS

VAN AMBATIELOS  
PRESIDENT

E. FELICIA BRANNON  
VICE PRESIDENT

JOSELYN GEAGA-ROSENTHAL  
GEORGE HOVAGUIMIAN  
JAVIER NUNEZ

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

RAYMOND S. CHAN, C.E., S.E.  
GENERAL MANAGER

FRANK BUSH  
EXECUTIVE OFFICER

October 15, 2014

BOARD FILE: 140059  
C.D.: 4

Jason Rubin  
1540 Skylark  
West Hollywood, CA 90069

JOB ADDRESS: 1540 NORTH SKYLARK LANE  
TRACT: 10416; LOT 2 (Arb 5)

The Board of Building and Safety Commissioners, at its meeting of October 7, 2014, gave consideration to the application by Thomas DuMary III, to export 2,087 cubic yards of earth, from the above-referenced property.

The Board took the following actions:

1. FIND that 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;
2. ADOPT the Mitigated Negative Declaration ENV-2014-2105-MND; and
3. APPROVE the application subject to all conditions specified in the Department's report dated September 24, 2014 with the following condition:
  - a. Item C.13 shall be added as follows:

An oversight committee consisting of LADBS inspection shall monitor the hauling activity in the area of the subject property on a daily basis.

This action becomes effective and final when ten calendar days have elapsed from the date of the Board's action, unless an appeal is filed to the City Council pursuant to Section 91.7006.7.4 of the Los Angeles Municipal Code.

Page 2

Job Address: 1540 NORTH SKYLARK LANE

Board File: 140059

When a proposed Negative or Mitigated Negative Declaration has been approved, Public Resources Code Section 21152(a) requires that a Notice of Determination ("NOD") be filed within five working days after the effective date of the decision. The filing of the NOD with the County Clerk starts a 30-day statute of limitations on court challenges to the approval of the project pursuant to Public Resources Code Section 21167. Failure to file the notice results in the statute of limitations being extended to 180 days.



Van Ambatielos, President

BOARD OF BUILDING AND SAFETY COMMISSIONERS

NOT VALID WITHOUT STAMP AND SIGNATURE

CJ:mct

140059.FAL

c: Sr. Grading Inspector P. Mischlich  
Jonathan Brand  
Warren J. Kessler  
Howard Smuckler  
John Fiedler  
Jason Somers  
June Solnit Sale  
Beth Fogarty

APPROVED BY  
THE BOARD OF BUILDING AND SAFETY  
COMMISSIONERS ON

October 7, 2014

BOARD OF  
BUILDING AND SAFETY  
COMMISSIONERS

VAN AMBATIELOS  
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

RAYMOND S. CHAN, C.E., S.E.  
GENERAL MANAGER

FRANK BUSH  
EXECUTIVE OFFICER

September 24, 2014

BOARD FILE NO. 140059  
C.D.:4 (Councilmember T. LaBonge)

Board of Building and Safety Commissioners  
Room 1080, 201 North Figueroa Street

**APPLICATION TO EXPORT 2,087 CUBIC YARDS OF EARTH**

PROJECT LOCATION: 1540 NORTH SKYLARK LANE

TRACT: TR 10416

BLOCK: NONE

LOTS: 2 (Arb 5)

OWNER:

Jason Rubin  
1540 Skylark Lane  
West Hollywood, CA 90069

APPLICANT:

Thomas DuMary III  
10960 Wilshire Blvd., Suite 1510  
Los Angeles, CA 90024

The Department of Transportation (DOT) and the Department of Public Works (DPW) have reviewed the subject haul route application and have forwarded the following recommendations to be considered by the Board of Building and Safety Commissioners (Board) in order to protect the public health, safety and welfare.

**CONDITIONS OF APPROVAL**

Additions or modifications to the following conditions may be made on-site at the discretion of the Grading Inspector, if deemed necessary to protect the health, safety, and welfare of the general public along the haul route.

Failure to comply with any conditions specified in this report may void the Board's action. If the hauling operations are not in accordance with the Board's approval, The Department of Building and Safety (DBS) shall list the specific conditions in violation and shall notify the applicant that immediate compliance is required. If the violations are not corrected or if a second notice is issued by DBS for violations of any of the conditions upon which the approval was granted, said approval shall be void. Inasmuch as Board approval of the import-export operations is a condition precedent to issuing a grading permit in a "hillside" designated area, violation of this condition may result in the revocation of the grading permit issued in reliance of this approval.

**A. PERMITS AND BONDS REQUIRED BY THE DEPARTMENT OF PUBLIC WORKS:**

PERMIT FEE MUST BE PAID BEFORE THE DEPARTMENT OF BUILDING AND SAFETY WILL ISSUE A GRADING PERMIT.

1. Under the provisions of Section 62.201 of the Los Angeles Municipal Code, the following permit fee shall be required:
  - a) A total of 2,087 cubic yards of material moved 5.4 miles within the hillside area at a rate of \$0.29 per cubic yard per mile results in a fee of \$3,000.00.
2. The required permit fee shall be paid at the Street Services Investigation and Enforcement Division office, 1149 South Broadway, Suite 350, Los Angeles, California, 90015, telephone (213) 847-6000.
3. Under the provisions of Section 62.202 of the Los Angeles Municipal Code, a cash bond or surety bond in the amount of \$788,000.00 shall be required from the property owner to cover any road damage and any street cleaning costs resulting from the hauling activity.
4. Forms for the bond will be issued by Susan Sugay, Bond Processor, Bureau of Engineering Valley District Office, 6262 Van Nuys Boulevard, Suite 351, Van Nuys, CA 91401; telephone (818) 374-5082.

**B. GENERAL CONDITIONS:**

1. The owner or contractor shall keep the construction area sufficiently dampened to control dust caused by grading and hauling, and at all times shall provide reasonable control of dust caused by wind, at the sole discretion of the grading inspector.



2. Hauling and grading equipment shall be kept in good operating condition and muffled as required by law.
3. The Traffic Coordinating Section of the Los Angeles Police Department shall be notified at least 24 hours prior to the start of hauling, (213) 486-0688/486-0690.
4. Loads shall be secured by trimming or watering or may be covered to prevent the spilling or blowing of the earth material. If the load, where it contacts the sides, front, and back of the truck cargo container area, remains six inches from the upper edge of the container area, and if the load does not extend, at its peak, above any part of the upper edge of the cargo container area, the load is not required to be covered, pursuant to California Vehicle Code Section 23114 (c) (4).
5. Trucks and loads are to be watered at the export site to prevent blowing dirt and are to be cleaned of loose earth at the export site to prevent spilling.
6. Streets shall be cleaned of spilled materials during grading and hauling, and at the termination of each workday.
7. The owner/contractor shall be in conformance with the State of California, Department of Transportation policy regarding movements of reducible loads.
8. The owner/contractor shall comply with all regulations set forth by the State of California Department of Motor Vehicles pertaining to the hauling of earth.
9. A copy of the approval letter from the City, the approved haul route and the approved grading plans shall be available on the job site at all times.
10. The owner/contractor shall notify the Street Services Investigation and Enforcement Division, (213) 847-6000, at least 72 hours prior to the beginning of hauling operations and shall also notify the Division immediately upon completion of hauling operations. Any change to the prescribed routes, staging and/or hours of operation must be approved by the concerned governmental agencies. Contact the Street Services Investigation and Enforcement Division prior to effecting any change.
11. No person shall perform any grading within areas designated "hillside" unless a copy of the permit is in the possession of a responsible person and available at the site for display upon request.
12. A copy of this report, the approval letter from the Board and the approved grading plans shall be available on the job site at all times. A request to modify or change the approved routes must be approved by the Board of Building and Safety Commissioners before the change takes place.
13. The grading permit for the project shall be obtained within twelve months from the date of action of the Board. If the grading permit is not obtained within the specified time, re-application for a public hearing through the Grading Division will be required.

14. A log noting the dates of hauling and the number of trips (i.e. trucks) per day shall be available on the job site at all times.
15. This approval pertains only to the City of Los Angeles streets. Those segments of the haul route outside the jurisdiction of the City of Los Angeles may be subject to permit requirements and to the approval of other municipal or governmental agencies and appropriate clearances or permits is the responsibility of the contractor.
16. **The applicant shall defend, indemnify and hold harmless the City of Los Angeles (City), its agents, officers, or employees, from any claim, action, or proceeding against the City to attack, set aside, void or annul this approval, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.**
17. **A copy of the first page of this approval and all Conditions and/or any subsequent appeal of this approval and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the City's Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.**

**C. SPECIFIC CONDITIONS**

An authorized Public Officer may make additions to, or modifications of, the following conditions if necessary to protect the health, safety, and welfare of the general public.

1. The hauling operations are restricted to the hours between 9:00 a.m. and 3:00 p.m. on Mondays through Fridays. No hauling allowed on Saturdays, Sundays or holidays. Haul vehicles may not arrive at the site before the designated start time.
2. Hauling of earth shall be completed within the maximum time limit of 47 hauling days.
3. Staging: Staging is allowed on site and a maximum of 1 truck on Skylark Lane in front of the project site.
4. The approved haul vehicles are 10 wheel dump trucks.
5. Total amount of dirt to be hauled shall not exceed 2,087 cubic yards.

6. "Truck Crossing" warning signs shall be placed 300 feet in advance of the exit in each direction. Seven additional signs will be placed at the following locations:
  - A. Two on Thrasher Avenue in advance of Skylark Lane.
  - B. Two on Oriole Drive in advance of Thrasher Avenue.
  - C. Two on Doheny Drive in advance of Oriole Drive.
  - D. One on Bluebird Avenue in advance of Doheny Drive.
  
7. Six flag attendants, each with two-way radios, will be required during hauling hours to assist with staging and getting trucks in and out of the project area. One flag attendant will be placed at the following locations:
  - A. The entrance of the project site.
  - B. On Skylark Lane near 1525 Skylark Lane.
  - C. The intersection of Skylark Lane and Thrasher Avenue.
  - D. The intersection of Thrasher Avenue and Oriole Drive.
  - E. The intersection of Doheny Drive and Oriole Drive.
  - F. The intersection of Doheny Drive and Bluebird Avenue.

Flag persons and warning signs shall be in compliance with Part II of the latest Edition of "Work Area Traffic Control Handbook."

*(The intent of two-way radio communication is to permit the flag attendants to be able to sequence the haul vehicles so no trucks will by-pass on the same section of Skylark Lane, Thrasher Avenue, Oriole Drive, and Doheny Dr. They will have the ability to temporarily cease hauling to allow emergency or utility vehicles safe access.)*

8. The City of Los Angeles, Department of Transportation, telephone (213) 485-2298, shall be notified 72 hours prior to beginning operations in order to have temporary "No Parking" signs posted along streets in haul route.
  
9. The City of Los Angeles, Department of Transportation, telephone (213) 485-2298, shall be notified four days prior to beginning operations in order to have "Temporary Tow Away No Stopping" signs posted along Skylark Lane, adjacent to the jobsite.
  
10. Prior to hauling, the applicant shall provide the following information to Los Angeles Fire Department Station #41 located at 1439 N. Gardner Street, Los Angeles, CA 90046; telephone (213) 485-6241:
  - A. Contact information for the construction superintendent or contractor.
  - B. A copy of this approved staff report.
  - C. A map clearly illustrating the approved hauling route and involved street names.
  - D. The approved hauling hours.
  - E. The estimated completion date of hauling.