

November 4, 2014

**BY HAND DELIVERY**

Los Angeles City Council  
c/o City Clerk  
City of Los Angeles  
200 North Spring Street, Room 395  
Los Angeles, CA 90012

**Re: Appeal from Approval by the Board of Building and Safety Commissioners  
Board File No. 140042  
Application to Export 12,148 Cubic Yards of Earth  
9366 West Flicker Way, Los Angeles**

Members of the City Council:

This is an appeal from a decision by the Board of Building and Safety Commissioners (the "Board") on October 28, 2014, approving the above-referenced application, as recommended by the Departments of Building and Safety, Transportation, and Public Works.

The application involved a massive project to haul over 12,000 cubic yards of earth—roughly enough to fill an Olympic-sized swimming pool—down the steep hillside streets of Doheny Drive and environs (the "Haul Route"). The project is estimated to require approximately 1,300 truckloads over 113 hauling days.

At the hearing, members of the public expressed their serious concerns about public safety as a result of the Haul Route and requested consideration of additional safety measures designed to prevent tragedies such as those that occurred on two separate occasions on Loma Vista Drive in Beverly Hills. The Los Angeles Municipal Code provides that at the hearing the Board "shall consider the views of ... all other affected persons" and that it "shall then grant or conditionally grant approval of export and import operations or, in the event it determines that the grading activity, including the hauling operation, will endanger the public health, safety and welfare, **it shall deny the request.**" LAMC § 91.7006.7.5. The Municipal Code also contains specific notice provisions for the hearing. For the reasons set forth below, the Board failed to comply with the Los Angeles Municipal Code, and its approval of the application was arbitrary and capricious.

**I. The Board's Failure to Consider Reasonable Safety Measures Was Arbitrary and Capricious**

At the hearing, Ms. Evans, Ms. Jeong, and Mr. Lee proposed several additional requirements to mitigate the serious safety concerns posed by the Haul Route. As

support for these proposals, the speakers presented to the Board a copy of safety requirements recently adopted by the City of Beverly Hills for haul routes in the Trousdale area (the "Trousdale Plan") in the wake of the tragedies on Loma Vista Drive, in which two LAPD officers were killed on two separate occasions by runaway trucks. The Board dismissed these proposals outright, claimed without basis that they did not have the authority to adopt them (a position that the City Attorney's office conspicuously remained silent on), refused to even look at the Trousdale Plan before voting to approve the Haul Route, and then refused to answer the question why those measures were appropriate for Beverly Hills but not for Los Angeles. The Board's rejection of any of the measures set forth in the Trousdale Plan as beyond the scope of its authority was arbitrary and capricious because it was uninformed by any legal or factual basis.

Later in the proceedings, perhaps recognizing the arbitrary and capricious nature of the Board's refusal to consider the Trousdale Plan, Board President Ambatielos asked the Staff to review the Trousdale Plan and report back to the Board whether any of the measures therein could be adopted in Los Angeles. Mr. Lee asked the Board to defer action on the Haul Route so that it could consider the Staff's report. The Board refused to do so without explanation.

Among other requirements, the Trousdale Plan requires third-party safety inspections of the haul trucks, secondary braking devices on the haul trucks, and weighing stations at the haul site. Yet without any discussion of the merits of those requirements, Commissioner Javier Nunez dismissed them out of hand, saying that if we had any concerns about the safety of a vehicle, we should call the California Highway Patrol. Mr. Nunez's callous disregard for the safety concerns expressed by the public, and his suggestion that vehicle safety was solely the responsibility of the CHP, was a shocking abdication of his duty as a Commissioner in reviewing haul routes.

In sum, the Board's summary rejection of reasonable safety measures proposed by Ms. Evans, Ms. Jeong, and Mr. Lee—each of which has been adopted in the City of Beverly Hills—was arbitrary and capricious, and accordingly the Board's approval should be reversed.

## **II. The Board's Approval of the Haul Route Was Infected By Bias, Conflicts of Interest, and Sexism**

At the hearing, Ms. Evans, Ms. Jeong, and Mr. Lee expressed their concerns about safety and requested that the Board consider several additional safety measures. The Board dismissed those concerns in a manner that was insulting, condescending, and reflective of their disdain for any restraints on unchecked development because of their own conflicts of interest and bias.

For example, addressing Ms. Stella Jeong's fears about a tragedy occurring on Doheny Drive (similar to what has occurred twice in recent months on Loma Vista in Beverly Hills), Commissioner Javier Nunez said dismissively, "That's life in a big city." Later

during the proceedings, Mr. Nunez—the head of Local No. 300—pointed out that he represented thousands of construction workers, thus making abundantly clear whom he views as his constituency and the accompanying conflict of interest. As members of the City Council should be aware, in 2006 Mr. Nunez was removed from his position as Board president by Mayor Villaraigosa because of ethical violations. Yet notwithstanding his well-publicized ethics problems, Mr. Nunez was re-appointed to the Board by Mayor Garcetti. Regrettably, Mr. Nunez’s repeated inappropriate comments at the public hearing reflect his continued abject failure to discharge his duties as a public official.

For his part, Board President Ambatielos responded with equally inappropriate comments. Explaining the need for greater monitoring of compliance with the Haul Route conditions, Ms. Jeong stated that she did not have the time to sit out on the curb of her home on Doheny Drive to monitor compliance. Mr. Ambatielos responded, “No, I don’t want you sitting on the curb. You’re too pretty for that.” This appalling sexist comment was not only unbecoming of a Los Angeles city official, it epitomized the dismissive attitude that the Board displayed to any safety concerns surrounding the Haul Route. Mr. Ambatielos also analogized development in the Doheny Drive area to the Greek island of Mykonos, which Mr. Ambatielos reminisced used to be more idyllic and undeveloped than it is today, and which he no longer chooses to visit. Aside from being utterly irrelevant and insulting, that comment again was emblematic of the Board’s utter lack of regard for its obligations to ensure public safety.

Mr. Ambatielos’s bias was further demonstrated when another member of the public and resident of the affected area spoke up in favor of haul route approval, expressing enthusiasm for more construction and development. In response, Mr. Ambatielos stated that the speaker “was a breath of fresh air.” Similarly, Mr. Ambatielos and other Board members dismissively suggested that the proper remedy for our concerns was to seek a moratorium from the City Council on all construction in the neighborhood—a position we had never advocated. Such obvious bias and willingness to distort our positions reflected the Board’s abdication of their responsibilities and made a mockery of the Board’s duty “to protect the lives and safety of the residents and visitors of the City of Los Angeles.”

Given the Board’s obvious disdain for any safety concerns and its shockingly inappropriate comments, it is no surprise that the Board refused to even consider additional safety requirements for the Haul Route. We urge this Council to listen to the recording of the public hearing, because what transpired was patent evidence that the Board’s approval of the Haul Route was infected with bias and conflicts of interest and thus was arbitrary and capricious.

### **III. The Department of Building and Safety Did Not Provide Notice of the Hearing as Required by the Los Angeles Municipal Code**

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Finally, the Board's approval was defective because the Department of Building and Safety failed to comply with the notice provisions of the Los Angeles Municipal Code, which requires that a written notice be mailed at least ten days before the hearing to the owners of all properties within 300 feet of the exterior boundaries of the relevant site. We have been informed by residents who live within those boundaries that they did not receive any notice of the hearing as required by law. Before the hearing, one of our neighbors noted her objection to the lack of notice and requested a list of those who received the notice, when it was sent, and how it was sent. To date, she has not received any response. The Board's disregard of its notice obligations provides a further basis that the approval should be reversed.

Very truly yours,



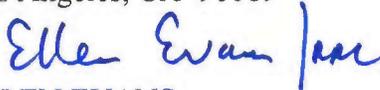
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cc: Board of Building and Safety Commissioners

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