

Channel Law Group, LLP

8200 Wilshire Blvd.
Suite 300
Beverly Hills, CA 90211

Phone: (310) 347-0050
Fax: (323) 723-3960
www.channellawgroup.com

JULIAN K. QUATTLEBAUM, III *
JAMIE T. HALL **
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Colorado
**ALSO Admitted in Texas

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VIA ELECTRONIC MAIL AND PERSONAL DELIVERY

Planning and Land Use Management Committee
Los Angeles City Hall
200 N. Spring Street, Room 425
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

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2018 SEP -7 PM 3:39
CITY CLERK

**Re: Haul Route Appeal 1565 North Haslam Terrace (Board File Number 180058;
ENV-2018-219-CE**

Dear Chairmen Huizar:

This firm represents Doheny-Sunset Plaza Neighborhood Association ("Appellant" or "Association"). On August 29, 2018, the Board of Building and Safety Commissioners ("Board") granted a haul route permit for 1565 North Haslam Terrace (the "Project"). The Board also determined that the project was exempt from the California Environmental Quality Act ("CEQA"). Pursuant to Los Angeles Municipal Code Section 91.7006.7.5 and Public Resources Code Section 21151(c)¹, Doheny-Sunset Plaza Neighborhood Association, Inc. ("Appellant") appeals both the grant of the aforementioned haul route permit and the adoption of a Mitigated Declaration to the Los Angeles City Council.

The Board erred in granting the haul route permits because the proposed grading activity will endanger the public health, safety and welfare and denial was therefore mandated pursuant to Los Angeles Municipal Code ("LCAMC") Section 91.7006.7.5. The Board also incorrectly determined that the project was exempt from CEQA. There are cumulative impacts that must be

¹ PRA section 21151(c) states as follows: "If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."

analyzed and mitigated and the haul route permit cannot be granted until proper environmental review has been completed.

I. The Project

The “Project” is described as follows in the Notice of Exemption (“NOE”) issued for the “Project.”

Major Hillside Remodel of an existing single-family dwelling with 4,992 square feet of residential floor area under the Baseline Hillside Ordinance (Ordinance No. 181,624) with an attached two-car garage on a 16,606 square foot lot located within the Hollywood Community Plan. The project involves hillside soil grading and export of approximately 2,100 cubic yards. The project site does not contain any protected trees.

The City has asserted in the NOE that the project qualifies for both a Class 3, Category 1 and Class 32 Categorical Exemption. The Class 3 exemption is for construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples of this exemption include but are not limited to single family residences not built in conjunction with two or more units. In urbanized areas, up to three single family residences may be constructed under this exemption. *See* 14 Cal. Code Regs. section 15303.

The Class 32 exemption is reserved for certain types of “infill” projects. According to the State CEQA Guidelines, a project must meet the following conditions to qualify for this exemption:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

14 Cal. Code Regs. section 15332. *See* City of Los Angeles Pamphlet Entitled “Class 32 Categorical Exemption” available at https://planning.lacity.org/Forms_Procedures/7828.pdf

II. The Exceptions to the “Single Family Home Exemption”

CEQA Guidelines Section 15300.2 - labeled “Exceptions” - outlines six situations where an exemption may not be used. The Project qualified for the following three exceptions.

“(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the

environment may in a *particularly sensitive environment* be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an *environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.*

(b) *Cumulative Impact.* All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) *Significant Effect.* A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

CEQA Guidelines Section 153002.

Notably, the City’s CEQA Guidelines indicates that categorical exemptions may **not** be used when the cumulative impact of successive projects of the same type in the same place may be significant.” Article III, section (4)(b) of City of Los Angeles CEQA Guidelines, p. 26.

III. The California Environmental Quality Act

a. Purpose of California’s Environmental Protection Statute

The California Environmental Quality Act is California's broadest environmental law. CEQA helps to guide public agencies such as the City during issuance of permits and approval of projects. Courts have interpreted CEQA to afford the fullest protection of the environment within the reasonable scope of the statutes. CEQA applies to all discretionary projects proposed to be conducted or approved by a City, including private projects requiring discretionary government approval. *See California Public Resources Code, sections 21000 - 21178, and Title 14 Cal. Code Regs., section 753, and Chapter 3, sections 15000 - 15387.*

b. CEQA’s Broad Definition of a “Project” Includes All Phases of a Development

“CEQA broadly defines a ‘project’ as ‘an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and ... that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.’ [Citation.] The statutory definition is augmented by the [CEQA] Guidelines [Cal.Code Regs., tit. 14, § 15000 et seq.], which define a ‘project’ as ‘*the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....*’” *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222, 66 Cal.Rptr.3d 645 (*Tuolumne County*). This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project. (CEQA Guidelines section 15378).

c. CEQA Has a Strong Presumption in Favor of EIR Preparation

A strong presumption in favor of requiring preparation of an Environmental Impact Report (“EIR”) is built into CEQA which is reflected in what is known as the “fair argument”

standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Friends of "B" St. v. City of Haywood* (1980) 106 Cal.App.3d 988, 1002.

“The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’ [Citation.] The EIR is therefore ‘the heart of CEQA.’ [Citations.] An EIR is an ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

Under CEQA and the CEQA Guidelines, if a project is not exempt and *may* cause a significant effect on the environment, the agency *must* prepare an EIR. PRC §§ 21100, 21151; 14 Cal. Code Regs. §15064(a)(1), (f)(1). "Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC §21068; 14 Cal Code Regs §15382. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 n.16; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309, 248 CR 352. This standard sets a "low threshold" for preparation of an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App. 4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 CA4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 CA3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 CA3d 296, 310.

IV. The Project is Not Eligible for a Class 3 CEQA Exemption

a. The Cumulative Impacts Render the Exemption Inapplicable

A project is not eligible for the single-family home exemption when there are “cumulative impacts.” Section 15300.2(b) of the CEQA Guidelines states as follows: “All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” There are numerous projects in the vicinity which result in cumulative impacts. In fact, there is an proposed project located two parcels down at 1585 Haslam Terrace. The applicant for that project has filed for a grading permit and proposed to export 1026 cubic yards of dirt. A screenshot from the LADBS website for that project is shown below.

| 1585 N HASLAM TER 90069 | |
|-------------------------|--|
| Application / Permit | 17030-10000-01157 |
| Plan Check / Job No. | B17LA02755 |
| Group | Building |
| Type | Grading |
| Sub-Type | 1 or 2 Family Dwelling |
| Primary Use | () |
| Work Description | GRADING PERMIT (CUT+FILL - 1026 CUB YOS) |
| Permit Issued | No |
| Current Status | Verifications in Progress on 1/29/2018 |

The Justification for Project Exemption Issued by the City erroneously states that there is only a single project proposed in the nearby vicinity located at 1630 North Rising Glen Road. There are clearly cumulative impacts that render the use of the exemption unavailable.

b. *The Project is Located in the Santa Monica Mountains Zone and is Therefore Located in a "Particularly Sensitive Environment"*

As explained in the CEQA Guidelines, "a project that is ordinarily insignificant in its impact on the environment may in a *particularly sensitive environment* be significant." CEQA Guidelines Section 15300.2(a). An exemption does not apply where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

The Santa Monica Mountains Comprehensive Plan was adopted in 1979. The property is subject to the Plan because it is located within the Santa Monica Mountains Zone. The Zone was established by the Legislature via the Santa Monica Mountains Conservancy Act, which is codified at Section 33001 of the Public Resources Code. The Act states as follows:

"The Legislature hereby finds and declares that the Santa Monica Mountains Zone, as defined in Section 33105, is a unique and valuable economic, environmental, agricultural, scientific, educational, and recreational resource that should be held in trust for present and future generations; that, as the last large undeveloped area contiguous to the shoreline within the greater Los Angeles metropolitan region, comprised of Los Angeles and Ventura Counties, it provides essential relief from the urban environment; that it exists as a single ecosystem in which changes that affect one part may also affect all other parts; and that the preservation and protection of this resource is in the public interest."

So, the Legislature itself declared that the Santa Monica Mountains Zone is a unique and valuable environmental resource that provided essential relief from the urban environment. Notwithstanding the habitat maps, all of the Santa Monica Mountains comprise an environmental resource of critical concern. The Santa Monica Mountains Conservancy Act goes on to say the following:

"in the absence of a governmental mechanism to perform such evaluations, piecemeal development projects were occurring within the zone which resulted in the irreplaceable loss of open space and recreational resources, in the physical and biological deterioration of air, land, and water systems within the zone, and adversely affected regional life-support systems, including fish and wildlife, therefore being harmful to the needs of the present and future population of the region."

The Legislature further declared at PRC Section 33008 that:

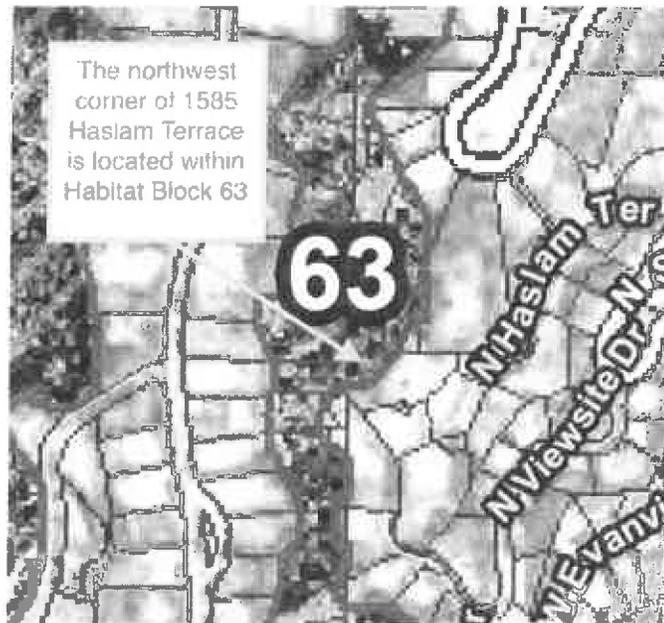
"there are existing problems of substandard lots, incompatible land uses, conflicts with recreational use, and inadequate resource protection which, in some cases, cannot be addressed in a feasible manner by local government exercise of the police power or federal land acquisition as part of the Santa Monica Mountains National Recreation Area, and that it is necessary to enact the provisions of this division as a complement to the full exercise of the police power by local governments . . ."

The Legislature also stated that “the people of the State of California have an interest in the protection of resources and the use of lands acquired or managed by the conservancy pursuant to this division, and that the conservancy in carrying out its duties pursuant to this division acts on behalf of the State of California.”

c. The Property is Located in a Habitat Linkage Block

The property is located within of Habitat Linkage Block 63. The Santa Monica Mountains Conservancy (“SMMC”), a state agency, officially adopted a map entitled “Eastern Santa Monica Mountains Habitat Linkage Planning Map” in May of 2017. The SMMC has determined that these habitat blocks are an “environmental resource of critical concern.” A screenshot of the map (zoomed in) is shown below.

Screenshot Showing Location of Project Within Habitat Linkage Block



Eastern Santa Monica Mountains Habitat Linkage Planning Map
Santa Monica Mountains Conservancy, State of California



MAY 2017

Wildlife have been observed on the property in question because of its location within Habitat Linkage Block 63. Large portions of the property remain undeveloped and therefore the property provides habitat for animals to eat, drink water and shelter. The following animals been seen by residents in the area at one time or another: (1) Coyotes, (2) Hawks, and (3) Squirrels, (4) Deer and (5) Owls.

The bottom line is that the Project may impact on an environmental resource of critical concern. The Project may adversely impact the existing wildlife in the area by removing critical habitat.

The SMMC’s Habitat Linkage Planning Map builds on the Comprehensive Plan that was prepared in 1979. The City of Los Angeles adopted a formal resolution in 1979 undertaking its

intent to implement the Santa Monica Mountains Comprehensive Plan as the local agency with planning and land use jurisdiction. The Plan was mandated by the Legislature and is a planning tool designed to help conserve and preserve the Santa Monica Mountains. Policy No. 21 specifically deals with Wildlife Protection. A screenshot of Policy No. 21 (which the City committed to implement in 1979) is found below:

Plan Policy No. 21

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Wildlife Network

A minimum wildlife network should be established, consisting of:

- A. Significant Ecological Areas;
- B. Buffer Zones for the Significant Ecological Areas; and,
- C. Existing parks and other key habitats.

The Santa Monica Mountains support a diverse and healthy population of wildlife, including mountain lions, bobcats, coyotes, golden eagles, steelhead and a wide range of other species. The Land Capability Study identifies a minimum 90,000 acre wildlife network, the most significant portion of which is recommended for acquisition. Where development is allowed within the remaining network, densities should be very low.

The Property in question has been mapped by the Conservancy as a Habitat Linkage Zone because it meets the four basic elements identified in the Plan as shown below.

Screenshot of Wildlife Habitat Elements Identified in Plan

It is difficult to determine key wildlife habitats, but at least four basic elements must be present:

1. Breathing room: undisturbed areas where animals feed and separate themselves from other animals.
2. Basic food source: at its most basic level, certain plant communities.
3. Key land features: rock outcroppings for nesting sites, open areas for feeding, year-round streams, etc.
4. Flexibility: the ability to move to other areas to deal with the often rapid and harsh changes in the ecosystem of the Santa Monica Mountains.

In sum, the use of the Class 3 single-family home exemption cannot be used for this project both because it is located within the Santa Monica Mountains Zone and within Habitat Linkage Zone Number 63. Environmental review pursuant to CEQA is required because the mountains are an *environmental resource of critical concern* that have been designed and precisely mapped pursuant to state law.

d. The Project May Impact on An Environmental Resource of Critical Concern Even If Building Footprint Will Not Encroach Within Undeveloped Portion of Property

Any argument that the exemption only applies when a building's proposed footprint falls within the boundaries shown on the SMMC map. This ignores the plain language of the exception quoted above. The issue is simply whether the project, because of its location, "*may impact*" the resource. The leading case interpreting the exception, *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098 reiterates this: "It is undisputed that the project site is adjacent to a protected anadromous fish stream The relevant issue is thus reduced to whether the project "may impact" on that environmental

resource of critical concern.” Id. at p. 1106. While the project was also within a stream conservation area, it is clear that the analysis related not to whether the project would impact that conservation area, but rather whether it would impact the actual resource, namely the *nearby* stream and fish:

The County Board of Supervisors remarked that one constraint on development of the project site was the possible “adverse impacts on the habitat of threatened or endangered species,” and also found “[p]ossible disharmonies with the creek.” Even Hedlund’s own engineering consultant acknowledged, in a riparian protection plan submitted to the County, that runoff from new rooftops and driveways can erode stream banks, and proposed extensive drainage features for erosion and sediment control. The Board’s ultimate conclusion that the project would not result in adverse effects was expressly founded on “dozens of conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts.”

Id. at pp. 1106-07. Obviously, the project cited above was not in the stream.

The resources of critical concern here are habitat blocks and the linkage system which the Conservancy has attempted to map on an initial basis and the wildlife itself that utilizes this linkage system. As the Conservancy found, “the efficacy of the subject habitat linkage system could be severed by new fencing on just one or two residential parcels.” There is no real dispute that wildlife use the property in question. The property is within a habitat linkage block. The project site is right in between the two habitat blocks, so it is hardly surprising that animals would be seen crossing the property.

V. The Project May Have an Impact on Environmental Resource of Hazardous Concern

CEQA Guidelines Section 15300.2(a) specifically excepts a project such as this from the Class 32 Exemption “where the project may impact on an environmental resource of hazardous or critical concern” where officially designated. Here, the property has been officially mapped in a “Very High Fire Hazard Severity Zone” due to its location in a fire-prone hillside area of the City.

The City has defined the “Very High Fire Hazard Severity Zone” as follows:

“Any area within the City of Los Angeles that poses a significant threat of fire from adjoining natural brush hillside areas and which is determined by the following factors: topography, infrastructure, fire protection, population density, types of construction, weather, existing fire codes and ordinances, and fire history.”

LAMC Section 57.202. The City’s Zone Information and Map Access System (“ZIMAS”) describes the Very High Fire Hazard Severity Zone as follows:

“Lands designated by the City of Los Angeles Fire Department pursuant to Government Code 51178 that were identified and recommended to local agencies by the Director of Forestry and Fire Protection based on criteria that includes fuel loading, slope, fire weather, and other relevant factors. These areas must comply with the Brush Clearance Requirements

of the Fire Code. The Very High Fire Hazard Severity Zone (VHFHSZ) was first established in the City of Los Angeles in 1999 and replaced the older 'Mountain Fire District' and 'Buffer Zone.'"

There should be no question that this officially designated zone represents a "hazardous" concern. A true and correct copy of the City's Very High Fire Hazard Zone Severity Map is attached as Exhibit A.

Further, the property has been officially mapped within a fault zone and landslide zone as evidenced by the City's ZIMAS.

VI. Unusual Circumstances Renders Exemption Inapplicable

- a. Even without reference to the officially-designated areas of environmental concern, the unique combination of multiple special features associated with the location of the Project constitute "unusual circumstances" that except the Project from the application of a categorical exemption.

Subdivision (c) of Section 15300.2 of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15300.2(c)) provides, "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Just as CEQA and the Guidelines prohibit piecemealing in determining the potential environmental impacts of a project (see, e.g., Pub. Resources Code § 21083(b)(2); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376), the fact that a particular circumstance, standing alone, arguably may not be unusual does not mean that a combination of 19 unusual circumstances in combination is not sufficient to invoke the provisions of Cal. Code Regs., tit. 14, § 15300.2(c). Such a unique combination of circumstances is certainly unusual.

Furthermore, as pointed out by the California Supreme Court in the recent Berkeley Hillside Preservation case,

A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1105. Thus the comparison required is not as against the house next door or the other houses in the neighborhood (or, for that matter, even the other houses in Los Angeles). The appropriate comparison, as indicated in the quote immediately above, is to "others in the exempt class." If there is a circumstance that is not usual among all Class 3 projects, namely, "construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure" (Cal. Code Regs., tit. 14, § 15303), then all that is necessary is a showing of "a reasonable possibility of a significant effect" due to the unusual circumstance, according to the Supreme Court's analysis in Berkeley.

Given the presence of unusual circumstances, and the standard announced by the California Supreme Court in the Berkeley case that “when there are ‘unusual circumstances,’ it is appropriate for agencies to apply the fair argument standard in determining whether ‘there is a reasonable possibility of a significant effect on the environment due to unusual circumstances’ ” (*Berkeley*, supra, 60 Cal.4th at 1115), it is incumbent upon the City to reject use of the proposed categorical exemption from CEQA.

b. The fact that the Project will have a significant effect on the environment renders the categorical exemption inapplicable.

The California Supreme Court, in the Berkeley decision quoted above, continued its analysis as follows:

Alternatively, under our reading of the guideline, a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect. That evidence, if convincing, necessarily also establishes “a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

Berkeley, supra, 60 Cal.4th at 1105. Thus, if it can be shown, as is the case here, that the Project, will have a significant effect on the environment, that alone is sufficient to eliminate the applicability of the categorical exemption. The Public Resources Code defines the phrase “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment.” Pub. Resources Code, § 21068. There is no basis to conclude that potentially removing a parcel (or even part of a parcel) from usage as habitat for wildlife (especially when the parcel has been officially designated as a habitat block) will not cause a change in the behavior of the wildlife that have become habituated to utilizing that habitat. The question is merely whether such a change is adverse and whether it is at least potentially substantial. It is axiomatic that elimination of an available wildlife corridor is an adverse change in the environment. Thus, the only open question is whether such elimination is necessarily of no substance. Appellant submits that the change emanating from such elimination would be one of substance.

c. The Project’s Potential Use as a Sober Living Facility is an Unusual Circumstance

Appellant is advised that the Project may be utilized as a so-called “sober living” facility with up to six people residing in the home (not including staff). Such facilities are known to have unique impacts due to the number of staff (not to mention delivery persons) needed to run such a facility. This is an unusual circumstance that warrants environmental review under CEQA. The fact that such facilities are allowed by state law does not obviate the requirement that the City analyze the reasonability foreseeable impacts under CEQA in conjunction with the requested haul route permit.

VII. The Project Does Not Qualify for the Class 32 Exemption

As previously noted (and recognized in the NOE), there are five conditions which the project must meet in order to qualify for the Class 32 Categorical Exemption

a. The Project is Not Consistent with All Applicable General Plan Policies

The Project is not consistent with all applicable general plan policies. As noted in the NOE, a categorical exemption for infill development is not available where the project is not “consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.” 14 CCR § 15332(a). Here, there can be no finding that the Project is consistent with all relevant policies. For example, Policy 1.1.1 of the Safety Element requires coordination among agencies to promote safety. Unfortunately, there is very little coordination with enforcement authorities to ensure conditions are complied with. Residents have reported that they repeatedly need to call multiple different agencies when problems develop. Likewise, Policy 2.1.1. requires coordination with respect to emergency responses. Unfortunately, development in the hillsides has been allowed without such coordination, so that emergency vehicle passage cannot be guaranteed. The disaster response policies of 3.1.1 and 3.1.2 are also compromised by further approval of haul routes, since the truck traffic may interfere with disaster recovery. The Project is also not consistent with policies of the Mobility Element of the General Plan.² See especially, Policy 1.7 (maintaining safe streets in good to excellent condition); 1.8 (ensuring that the movement of goods does not endanger residents); 2.3 (creating pedestrian infrastructure). The safety issues are heightened because the neighborhood does not have sidewalks, and pedestrians need to walk in the street, immediately adjacent to the construction trucks.

Further, the Class 32 exemption is not appropriate because of the Project’s impacts on traffic and potential disruption to water service due to the existing of aging pipes in the neighborhood. A categorical exemption for in fill development is not appropriate if the developer cannot show that approval would not result in “any significant effects relating to traffic, noise, air quality, or water quality.” 14 CCR § 15332(d). In this case, the neighborhood is already experiencing significant effects relating to traffic from other similar developments. City officials have stated to residents that there is a risk to water service due to the aging pipes in the area. The cumulative impacts associated with the projects referenced above result in significant effects related to traffic, noise, air quality and water quality.

b. Noise Impacts May be Significant

In the 8426 Brier Drive haul route project discussed below, the City determined that noise was a potentially significant environmental impacts and adopted Mitigation Measure No. XII-20. The City stated the following with regard to the potential impacts:

² <http://planning.lacity.org/documents/policy/mobilityplnmemo.pdf>.

| | | | |
|---|--|--|--------|
| b | POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED | Construction activities can generate varying degrees of vibration, depending on the construction procedures and the type of construction equipment used. High levels of vibration may cause physical personal injury or damage to buildings. However, vibrations rarely affect human health. The operation of construction equipment generates | XII-20 |
|---|--|--|--------|

| Impact? | Explanation | Mitigation Measures |
|---------|--|---------------------|
| | vibrations that spread through the ground and diminish with distance from the source. Unless heavy construction activities are conducted extremely close (within a few feet) to the neighboring structures, vibrations from construction activities rarely reach the levels that damage structures. However, with mitigation, the proposed project would result in a less than significant impact related to construction vibration. | |

The City then adopted the following mitigation measure:

- XII-20. **Increased Noise Levels (Demolition, Grading, and Construction Activities)**
- Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday and 8:00 am to 6:00 pm on Saturday

MITIGATED NEGATIVE DECLARATION
ENV-2015-2587-MND

- Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
- The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices

The same noise impacts that the City could see with regard to the 8426 Brier Drive project are present in this case. Therefore, the Project is not eligible for a Class 32 exemption from CEQA.

c. The Project Provides Value as Habitat for A "Rare" Species

The Justification for Project Exemption states that there are no protected trees on the property, However, the applicant has not commissioned a Protected Tree Report ("PTR") and

cannot substantiate this claim. In fact, due to the Project's location in a Habitat Linkage Block it is highly likely there are protected trees located in the undeveloped portion of the property that may need to be protected during the construction process. A PTR is not only required when a removal is required, but when large construction activity is proposed. The certified arborist will proposed mitigation measures for protecting trees that may be impacted (e.g. installation of protective fencing). Moreover, the Southern California Black Walnut is a rare species and the property has value as habitat for that species. As a result, the Project is not eligible for a Class 32 exemption. The Southern California Black Walnut is listed on the California Department of Fish and Wildlife's California Natural Diversity Database ("CNDDDB")³. The walnut can be found on page 76 of the database and is listed as a "Special Plant." It has a Global ranking of G3 and State ranking of S3, along with having a California Rare Plant Rank (CRPR) of 4.2. G3 means globally Vulnerable—At moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors. S3 follows the same definition of Vulnerable but for California alone. CRPR 4 means Limited Distribution / Watchlist, and the .2 (of 4.2) means moderately threatened, with 20-80% of it's occurrences threatened. The Southern California Black Walnut has a "Rare Plant Rank" of 4. Class 4 Plants are described as follows:

Watch List: Plants of limited distribution

Plants with a California Rare Plant Rank of 4 are of limited distribution or infrequent throughout a broader area in California, and their status should be monitored regularly. Should the degree of endangerment or rarity of a California Rare Plant Rank 4 plant change, we will transfer it to a more appropriate rank.

Some of the plants constituting California Rare Plant Rank 4 meet the definitions of the California Endangered Species Act of the California Fish and Game Code, and few, if any, are eligible for state listing. **Nevertheless, many of them are significant locally, and we strongly recommend that California Rare Plant Rank 4 plants be evaluated for impact significance during preparation of environmental documents relating to CEQA, or those considered to be functionally equivalent to CEQA, based on CEQA Guidelines §15125 (c) and/or §15380. This may be particularly appropriate for:**

- The type locality of a California Rare Plant Rank 4 plant.
- Populations at the periphery of a species' range,
- Areas where the taxon is especially uncommon,
- Areas where the taxon has sustained heavy losses, or
- Populations exhibiting unusual morphology or occurring on unusual substrates.

³ <https://www.wildlife.ca.gov/Data/CNDDDB>

Moreover, when the City adopted the amended 2006 Protected Tree Ordinance to add Southern California Black walnuts, they adopted the following finding that environmental review should be conducted for such plants:

1. In accordance with Charter Section 556, the proposed ordinance (Appendix A) is in substantial conformance with the purposes, intent, and provisions of the General Plan. It implements Policy 3 of Section 6: Endangered Species of the Conservation Element of the General Plan by revising regulations concerning endangered species; and Policy 4 of Section 10: Habitats of the Conservation Element of the General Plan by creating legislation that encourages and facilitates protection of local native plant and animal habitats. It also implements the California Environmental Quality Act by designating *Juglans californica* var. *californica* as a protected species, consistent with the recommendations of the California Native Plant Society (6th Inventory of Endangered Species, RED Code 4-4-4) that this "locally significant" species be "evaluated for consideration during the preparation of environmental documents relating to CEQA"; and

In sum, a PTR should be required to determine whether or not there are Southern California Black Walnuts on the property. If there are, then a Class 32 exemption cannot be utilized for the Project.

d. The NOE Incorrectly Determined that the Project Could be Adequately Served by Public Utilities and Services

The NOE adopted by the City stated the following: "The project site will be adequately served by all public utilities and services given that the project is the major remodel of an existing single family dwelling, therefore resulting in no increase in density or significant increase in population." However, on this street, LADWP has already notified residents that the electrical grid needs to be upgraded and a new transformer installed. The major remodel of this house will certainly overtax the fragile electrical system.

VIII. The Project is Not Exempt from CEQA Because the City Has Proposed Mitigation Measures in the Form of Specialized Conditions of Approval for the Project

Significantly, in evaluating whether a categorical exemption may apply, the agency may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098.

The Grading Division has issued a Geology and Soils Report Approval Letter for the Project. This letter contains numerous conditions of approval. Many of these conditions are not simply applications of the California Building Code or existing City of Los Angeles regulations. The fact that the Geology Report contains specialized mitigation measures renders the application of a categorical exemption in appropriate and unlawful. Again, under CEQA the City may not rely on mitigation measures as a basis for concluding that a project is categorically exempt from CEQA.

IX. The Project is Also Not Exempt from CEQA Because the City Seeks to Defer Application of Mitigation Measures to Another Date

Additionally, many of the conditions of approval simply “kick the can” down the road and defer required environmental analysis to another date. This does not comply with CEQA.

Conditioning a project on another agency's future review of environmental impacts, without evidence of the likelihood of effective mitigation by the other agency, is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated. *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296. Further, requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. PRC § 21080, subd. (c)(2)). See *League for Protection of Oakland Architectural & Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Quall Botanical Ganlens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v. Cnty. of El Dorado* (1990) 225 Cal.App.3d 872, 884; *Sundstrom v. Cnty. of Mendocino*, supra, 202 Cal.App.3d at p. 306, (condition requiring that mitigation measures recommended by future study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and flooding impacts was improper). Moreover, a condition that requires implementation of mitigation measures to be recommended in a future study may conflict the requirement that project plans incorporate mitigation measures before a proposed negative declaration is released for public review. PRC § 21080, subd. (c)(2); 14 Cal Code Regs § 15070(b)(1). Studies conducted after a project's approval do not guarantee an adequate inquiry into environmental effects. Such a mitigation measure would effectively be exempt from public and governmental scrutiny.

X. The City Has Conducted Mitigated Negative Declarations for Haul Route Projects of Smaller Scale

The City has conducted environmental reviews for projects in other hillside communities that were of smaller scale. For example, in November 2015, the City published a Mitigated Negative Declaration for a proposed haul route located at 8426 W. Brier Drive. The applicant in that instance had proposed to export 2,660 cubic yards of dirt (compared to 3,106 cubic yards of dirt for instant project). The City’s Initial Study noted the following “potentially significant impacts:” (1) Biological Resources, (2) Geology and Soils, (3) Hazards and Hazardous Materials, (3) Noise, (4) Transportation/Traffic and (5) Mandatory Findings of Significance.

Screenshot from MND/Initial Study Conducted for 8426 W. Brier Drive

Environmental Factors Potentially Affected:

The environmental factors checked below would be potentially affected by this project involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

| | | |
|---|---|--|
| <input type="checkbox"/> AESTHETICS | <input checked="" type="checkbox"/> GREEN HOUSE GAS EMISSIONS | <input type="checkbox"/> POPULATION AND HOUSING |
| <input type="checkbox"/> AGRICULTURE AND FOREST RESOURCES | <input checked="" type="checkbox"/> HAZARDS AND HAZARDOUS MATERIALS | <input type="checkbox"/> PUBLIC SERVICES |
| <input type="checkbox"/> AIR QUALITY | <input type="checkbox"/> HYDROLOGY AND WATER QUALITY | <input type="checkbox"/> RECREATION |
| <input checked="" type="checkbox"/> BIOLOGICAL RESOURCES | <input type="checkbox"/> LAND USE AND PLANNING | <input checked="" type="checkbox"/> TRANSPORTATION/TRAFFIC |
| <input type="checkbox"/> CULTURAL RESOURCES | <input type="checkbox"/> MINERAL RESOURCES | <input type="checkbox"/> UTILITIES AND SERVICE SYSTEMS |
| <input checked="" type="checkbox"/> GEOLOGY AND SOILS | <input checked="" type="checkbox"/> NOISE | <input checked="" type="checkbox"/> MANDATORY FINDINGS OF SIGNIFICANCE |

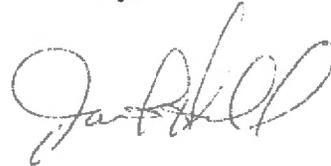
Clearly, the Regulatory Compliance Measures (“RCMs”) currently in place were deemed inadequate for this project (note: the haul route permit for this project was ultimately denied due

to the inadequacy of the MND). In fact, the MNDs conducted by the City in the past for haul route permits included mitigation measures that went *above and beyond* what may have been available through existing RCMs. For example, for the proposed project at 8426 Brier, the City adopted mitigation measures for non-protected trees in addition to protected trees because they also have an impact on the environment. *So why is the City now backtracking on their requirement to conduct environmental reviews for haul routes? What has changed?* The answer is nothing. This project is simply not exempt from CEQA.

XI. Conclusion

Appellant respectfully request that the City Council grant the appeal. The City has failed to analyze the environmental impacts of the Project. Moreover, the Project will endanger the public health, safety and welfare pursuant to LAMC 91.7006.7.5. Please note that Appellant reserve the right to supplement the justifications for appeal presented.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie T. Hall". The signature is fluid and cursive, with the first name being the most prominent.

Jamie T. Hall

cc: Emma Howard (via e-mail)
Renee Weitzer (via e-mail)
Terry Kaufmann-Macias (via e-mail)

Exhibit A

