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July 17, 2018

VIA PERSONAL DELIVERY

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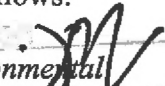
**Re: CEQA Appeal of Environmental Determination for Tree Removal Permit
Issued for 11580 Sunshine Terrace Pursuant to Public Resources Code Section
21151(c); ENV-2016-3230-MND**

Honorable Members of the Los Angeles City Council:

This firm represents the Sunshine Hill Residents Association ("SHRA" or "Appellant"). On or about June 18, 2018, the Board of Public Works ("Board") approved a tree removal permit for the removal of one Southern California Back Walnut (*Juglans californica*) tree and nine Coast Live Oak (*Quercus agrifolia*) trees to facilitate a proposed new single family home located at 11580 Sunshine Terrace in Studio City, CA (the "Project"). The Board also determined that no further environmental review was required under the California Environmental Quality Act ("CEQA") because a Mitigated Negative Declaration ("MND") had already been prepared for the Project and certified by the Board of Building and Safety Commissioners.

Pursuant to Public Resources Code Section 21151(c), SHRA hereby appeals the determination that no further environmental review is required under CEQA. This section of the Public Resources Code allows any interested party to file an appeal of a CEQA determination to the public agency's elected decision-making body. 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."

BY: 
CITY OF LOS ANGELES
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CITY CLERK'S OFFICE

The Board's determination was made on June 18, 2018 and therefore, this appeal, which is filed on July 17, 2018, is timely.

Appellant respectfully request that the City of Los Angeles City Council ("Council"), after reviewing this appeal and its records, revoke and set-aside the approval of the tree removal permit on the basis that a Subsequent Mitigated Negative Declaration is required under the circumstance. While this appeal is pending, appellants further request that all permit and tree removal activities related to the Project be immediately and temporarily stayed.

I. APPELLANT'S STANDING

Appellant Sunshine Hill Residents Association is a community organization composed of residents of Studio City concerned who live, work and recreate in the area surrounding the Tree Removal and would be negatively impacted if the Tree Removal were to move forward.

II. PROJECT BACKGROUND

The Project contemplates the removal of 2,123 cubic yards of soil for the construction of a single family dwelling on approximately 11,000 square foot never-before developed steep hillside site. The Project is located on a steep hillside parcel at 11580 Sunshine Terrace in Studio City, CA. The vacant site is a beautiful, hillside untouched except for 10 Southern California Black Walnuts Trees which were illegally removed, but have begun to grow back.

The City's Initial Study for the Project noted the following "potentially significant impacts:" (1) Biological Resources, (2) Hazards and Hazardous Materials, and (3) Transportation/Traffic.

Screenshot from MND/Initial Study Conducted for Project

| | | |
|---|--|--|
| <input type="checkbox"/> AESTHETICS | <input type="checkbox"/> GREEN HOUSE GAS EMISSIONS | <input type="checkbox"/> POPULATION AND HOUSING |
| <input type="checkbox"/> AGRICULTURE AND FOREST RESOURCES | <input type="checkbox"/> HAZARDOUS 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"/> TRIBAL CULTURAL RESOURCES |
| <input type="checkbox"/> GEOLOGY AND SOILS | <input type="checkbox"/> NOISE | <input type="checkbox"/> UTILITIES AND SERVICE SYSTEMS |

III. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report except in very limited circumstances. See, e.g., Cal. Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better*

Environment v. Calif. Resources Agency (2002) 103 Cal. App. 4th 98, 109. CEQA applies to agency projects that may have an adverse environmental impact. *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247, 259 (1972); *Friends of B Street v. City of Hayward*, 106 Cal.App.3d 988, 1003 (1980) (project that included removal of trees caused significant effect on environment). CEQA has two broad purposes: 1) avoiding, reducing or preventing environmental damage by requiring alternatives and mitigation measures (14 Cal. Code Regs. § 15002(a)(2)-(3) (hereinafter “CEQA Guidelines”)); and 2) providing information to decision makers and the public concerning the environmental effects of the proposed project. CEQA Guidelines § 15002(a)(1).

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. CEQA Guidelines § 15002(k); *Comm. to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 – 86. First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform a threshold initial study. *Id.*; CEQA Guidelines § 15063(a). If the study indicates that there is no substantial evidence that the project may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, CEQA Guidelines §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report (“EIR”) is required. *Id.* Here, since the City proposes to exempt the Project from CEQA entirely, we are at the first step of the CEQA process.

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 Hayward* (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. NON-COMPLIANCE WITH CEQA

a. A Subsequent Negative Declaration

As outlined in CEQA Guidelines Section 15162, a subsequent negative declaration is required under the following circumstances:

15162. Subsequent EIRs and Negative Declarations

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) 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;

(2) 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

(3) 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;

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

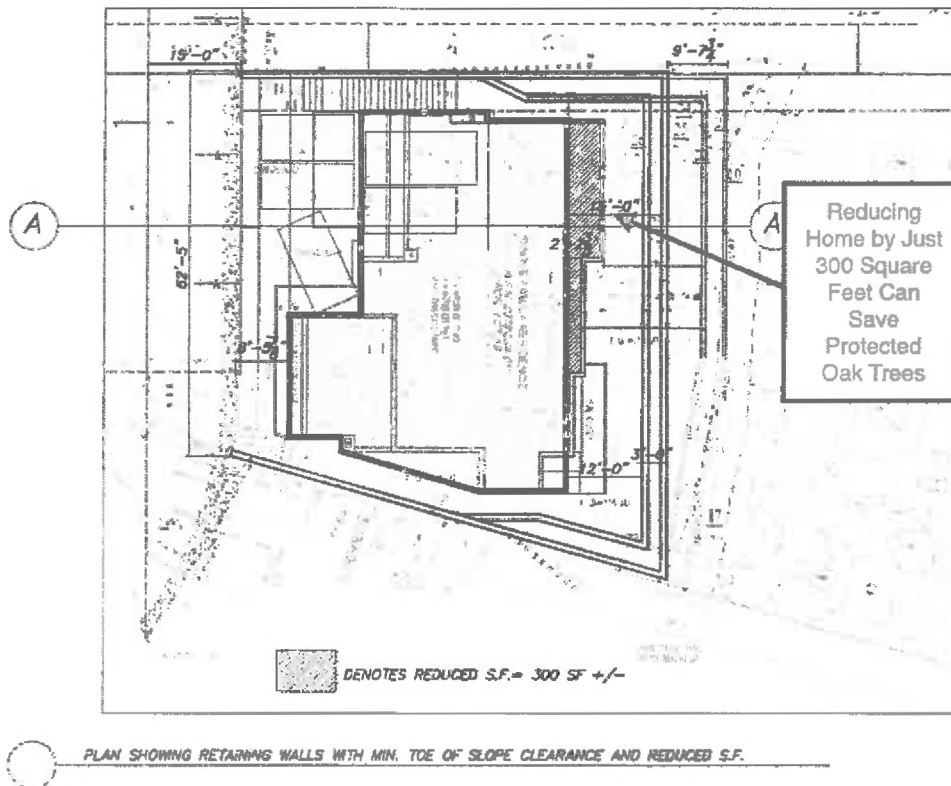
(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(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.

A subsequent MND is required in this situation because an alternative/mitigation measure is available that the applicant has declined to adopt. Specifically, the proposed retaining walls can be located a mere 9'8" closer to the street thereby saving an additional protected 5 trees. The

following trees can be saved with this alternative design: Tree No. 23, 24, 25, 22, 20. Only the following three (3) trees will need to be removed with the new proposed design: Tree No. 26, 27 and 28. A diagram of the alternative design is shown below.

Alternative Retaining Design that Will Save Five Additional Trees



This alternative design will reduce the home’s square footage by a mere 300 square feet (approximately 150 square feet per floor). The depth of the home will be reduced by a range of 5 feet to 2’2” (depending on side of home). Notably, any lost square footage could potentially be recaptured via other design changes (such as expanded balconies). The proposed retaining walls would not exceed 10 feet in height and no variances would be required under the City’s Retaining Wall Ordinance.

This alternative retaining wall design (which could also be fairly characterized as a “mitigation measure”) results in an environmentally superior project. However, the applicant has declined to adopt this design because they desire to have a larger “flat backyard.” This may be their desire, but it does not excuse the City from conducting an subsequent MND under CEQA.

Further, new information of substantial importance has come to light that demonstrates that the Project will have a significant environmental impacts that were not previously analyzed – mainly, noise and geology and soils. The City has acknowledged these potentially foreseeable impacts unique to hillside communities when they analyzed a proposal to grade a similar amount of dirt for a nearby project at 8426 W Brier Drive in Laurel Canyon in November of 2017. See ENV-2015-2587-MND.

The MND for the Brier Project with regard to noise said,

“Construction activities can generate varying degrees of vibration depending on the construction procedures and they type of equipment used. High levels of vibration may cause physical personal injury or damage to buildings. The operation of construction equipment generates vibrations that spread through the ground...With mitigation measures a less than significant environmental impact may result for the project”

Mitigation measure 12-20 was then adopted for the Brier Project – which went above and beyond what the municipal code required. The City also concluded that the Brier Drive project would have a potentially significant impact on geology and soils. Shockingly, however,, no such similar analysis was conducted for the Project at issue. A subsequent MND is required to analyze these issues.

b. At a minimum an Addendum was Required Due to Changes to the Project

At a minimum, changes to the Project made during the course of the administrative hearing process before the Board of Public Works mandated that the City conduct an Addendum pursuant to CEQA Guidelines Section 15164. This portion of the CEQA Guidelines states as follows:

15164. Addendum to an EIR or Negative Declaration

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

To summarize, when an MND requires “minor technical changes or additions” a City must conduct an Addendum and that document must be considered by the decision-making body along with the prior MND prior to making a decision on the Project. The Board of Public Works

was not provided any Addendum to consider prior to approving the tree removal permit at issue. Therefore, the City violated CEQA Guidelines Section 15164.

V. REQUEST FOR RELIEF

Appellant respectfully request that the City of Los Angeles City Council ("Council"), after reviewing this appeal and its records, revoke and set-aside the approval of the tree removal permit on the basis that a Subsequent Mitigated Negative Declaration is required under the circumstance. While this appeal is pending, appellants further request that all permit and tree removal activities related to the Project be immediately and temporarily stayed.

Finally, this appeal is made to exhaust administrative remedies concerning the tree removal permit and incorporates by reference the August 24, 2017 letter submitted on behalf of the residents to the Board prior to the June 18, 2018 hearing and all exhibits and attachments thereto. Please note that Appellant reserves the right to supplement the justifications for appeal presented. I trust the City will expedite this appeal promptly so that it can be reviewed by the Public Works and Gang Reduction Committee (and thereafter the City Council).

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie T. Hall", written in a cursive style.

Jamie T. Hall