

Communication from Public

Name: Kristina Kropp
Date Submitted: 08/20/2019 08:36 AM
Council File No: 18-0916
Comments for Public Posting: Please find enclosed correspondence in response to Appellants' August 7th correspondence.

LUNA & GLUSHON

A Professional Corporation

DENNIS R. LUNA
(1946-2016)

16255 VENTURA BOULEVARD, SUITE 950
ENCINO, CALIFORNIA 91436
TEL: (818) 907-8755
FAX: (818) 907-8760

August 20, 2019

VIA EMAIL

Los Angeles City Council
200 North Spring Street
Los Angeles, CA 90012

Re: Council File No. 18-0916/Appeal of Categorical Exemption for
10034 Westwanda Drive

Honorable Councilmembers:

Our law firm represents Armen Melkonians and Karla Shahin, the owners of the property located at 10034 Westwanda Drive where they intend to build a new home with a footprint of approximately 1,500 sq. ft. on a 4,009 sq. ft. lot ("Project") to live in with their family. The home is small and below the guaranteed minimum square footage under the Baseline Hillside Ordinance.

On March 7, 2018, the Board of Public Works approved the removal of three Coast Live Oak trees on the Project site. On March 14, 2018, the Director of Street Services issued a Permit to remove the three Coast Live Oak trees, requiring twelve replacement Coast Live Oak trees, the survival of which is to be guaranteed by a bond. Pursuant to these permits, and with Gregory Martayan, Director of Public Safety & Special Assignments to Councilmember Paul Koretz, onsite to oversee, the Property owners removed the Coast Live Oak trees.

On August 31, 2018, **177 days (almost six months after the trees were legally removed) later**, Appellants submitted the within appeal of the California Environmental Quality Act ("CEQA") determination for the Project.

At the Public Works and Gang Reduction Committee hearing, a suggestion was made for the two sides to meet and resolve their concerns. Accordingly, this appeal is before you without a recommendation. The Councilmembers should be aware that until after 3 p.m. the night before this

hearing, the Appellants refused to participate in any discussions to resolve this matter.

The Councilmembers should further be aware that on August 7, 2019, the day of the Public Works and Gang Reduction Committee hearing, Appellants submitted last minute correspondence, responses to which could not be captured in time by the Staff Report. For all of the reasons set forth hereinbelow, Appellants' last-minute correspondence is incorrect and unpersuasive as a matter of fact and law.

I. Appellants' Argument Regarding Woodlands is Incorrect

First, Appellants' argument that there exists a woodland on the Project site is unsubstantiated. Appellants' argument focuses on the existence of walnut trees which died during the drought from drought and/or thousand canker disease and were cut to stumps as part of required brush clearance. As set forth in the Staff Report and as confirmed by Chief Forester Tim Tyson at the Public Works and Gang Reduction Committee hearing, the remaining stumps and off-grown shoots do not constitute protected trees under the City's Protected Tree Ordinance. In fact, they have been cited by the City's Fire Department as a fire hazard that must be removed as part of City mandated brush clearance. [Notices Enclosed]¹.

Secondly, the existence (or lack thereof) of a woodland is a red herring. Even if Appellants are correct and there is or was a woodland on the Project site, they have failed to provide any evidence, let alone substantial evidence as required by CEQA, that this is "an unusual circumstance" for hillside residential development. If Appellants' argument is to be followed, all hillside development with multiple protected trees onsite would constitute "an unusual circumstance." Such analysis is oxymoronic. Indeed, the Councilmembers will note that by arguing that the Project site should be compared to the City "as a whole," rather than as compared to in the City's hillsides, Appellants implicitly admit that the Project is similar and not in any way unusual to other single-family projects in the City's hillsides.

Finally, it is worth noting that even if the Project site should be compared to the City "as a whole," other than making assertions, Appellants have failed to provide any actual evidence that if compared to the City "as a whole," this Project would be unusual. It is Appellants' burden to substantiate their contention with substantial evidence. They have plainly failed to do so here.

¹ The brush clearance has not been performed as a result of the within appeal.

II. The Fair Argument Standard Does Not Apply

Appellants assert that the “fair argument” standard applies to the question of whether the City appropriately adopted a Categorical Exemption. Appellants are flatly incorrect.

This very specific question has already been resolved by the California Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086. In *Berkeley Hillside*, just as here, appellants to a Categorical Exemption claimed that the unusual circumstances exception applied if project opponents could produce a fair argument that a project may or will have a significant environmental effect. The Supreme Court disagreed: the determination of whether there are unusual circumstances is reviewed under the substantial evidence standard.

In interpreting the relevant caselaw, Appellants miss the very important analytical step of first establishing, with substantial evidence, that the Project is located in an environmentally sensitive area. Simply raising this contention as an unsubstantiated argument and then claiming that their contentions should be judged under the fair argument standard is not enough. That is exactly what the California Supreme Court ruled in *Berkeley Hillside Preservation*.

As set forth in detail in the Staff Report, the Project is not located in an environmentally sensitive area for purposes of CEQA and that there are no unusual circumstances applicable and/or which trigger the unusual circumstances exception. Appellants have submitted no substantial evidence, as defined by CEQA, showing that the Project involves any unusual circumstance dissimilar to other single-family hillside residence projects, which is their burden to demonstrate.

Accordingly, the City Council should deny the within CEQA appeal.

Very truly yours,

LUNA & GLUSHON
A Professional Corporation

A handwritten signature in black ink, appearing to read "Rob Glushon", written in a cursive style.

ROBERT L. GLUSHON

Communication from Public

Name: Kristina Kropp

Date Submitted: 08/20/2019 09:44 AM

Council File No: 18-0916

Comments for Public Posting: Please find enclosed correspondence in response to Appellants' August 7th correspondence. The previously submitted document didn't have the attached notice.

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Secondly, the existence (or lack thereof) of a woodland is a red herring. Even if Appellants are correct and there is or was a woodland on the Project site, they have failed to provide any evidence, let alone substantial evidence as required by CEQA, that this is "an unusual circumstance" for hillside residential development. If Appellants' argument is to be followed, all hillside development with multiple protected trees onsite would constitute "an unusual circumstance." Such analysis is oxymoronic. Indeed, the Councilmembers will note that by arguing that the Project site should be compared to the City "as a whole," rather than as compared to in the City's hillsides, Appellants implicitly admit that the Project is similar and not in any way unusual to other single-family projects in the City's hillsides.

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ROBERT L. GLUSHON



City of Los Angeles
FIRE DEPARTMENT
NOTICE OF NONCOMPLIANCE



F-1308

APN: 4383-019-009 (Map Book-Page-Parcel)		Compliance Due Date: 06/02/2019	
SHAHIN,KARLA 00435 N BEVERLY DR BEVERLY HILLS CA 90210 STE 208		Inspection Date: 05/11/2019 Notice Printed: 05/13/2019 Inspector Id: 32960 Fire Station District: 99	Hazard Location: 00000 00000
<p>An inspection of the parcel indicated above has confirmed that brush clearance progress is not complete on your property as per the Fire Code (L.A.M.C. Section 57.322).</p> <p>In accordance with the Fire Code, you are required to maintain, as described below, all native brush, weeds, grass, trees and hazardous vegetation on your property within 200 feet of all structures, whether those structures are on your property or adjoining properties, and within 10 feet of any combustible fence or any roadway/driveway used for vehicular travel. Please see the specific violations checked below:</p>		<p>Next Action: A re-inspection of your property will occur on or after the Compliance Due Date. If found in compliance, a "CLEANED BY OWNER" inspection record will be made. If your property is not in compliance at the time of re-inspection, a \$508.00 (subject to change) noncompliance re-inspection fee will be assessed. The City may then complete the work on your behalf at an additional cost to you. The cost, including an administrative fee plus the noncompliance re-inspection fee, will become a special assessment. Upon City Council confirmation and recordation of that order, a lien may be attached to the above parcel to be collected on the next regular property tax bill.</p>	
<div> <input checked="" type="checkbox"/> 1. Maintain all weeds and grasses at a maximum height of 3 inches. </div> <div> <input checked="" type="checkbox"/> 2. Maintain the lower 1/3rd of trees and shrubs by removing all leafy foliage, twigs, and branches up to a maximum of six feet from the ground (i.e., any tree 18 feet or higher requires only 6 feet of clearance). </div> <div> <input type="checkbox"/> 3. Remove all dead trees, shrubs and vegetation. </div> <div> <input type="checkbox"/> 4. Maintain all weeds/grasses at a maximum height of 3 inches and all other vegetation located within 10 feet of any combustible fence or any roadway/driveway used for vehicular travel. </div> <div> <input type="checkbox"/> 5. Maintain 5 feet of vertical clearance between roof surfaces and portions of overhanging trees and shrubs (i.e., any overhanging foliage must be at least 5 feet above the roof). </div> <div> <input type="checkbox"/> 6. Remove any portion of a tree or shrub within 10-foot radius of a chimney outlet. </div> <div> <input type="checkbox"/> 7. Maintain the roofs of all structures free of leaves, needles, twigs and other combustible matter. </div> <div> <input type="checkbox"/> 8. Remove all dead/dry undergrowth and material within trees and shrubs. See comment section for further guidance to determine IF your landscape vegetation requires additional clearance. Comments will indicate additional items required. </div> <div> <input checked="" type="checkbox"/> 9. Once brush clearance is conducted, remove and safely dispose of all cut or bagged vegetation, all dead trees, and all debris (includes combustible rubbish and trash). In lieu of disposal, cut vegetation may be machine processed, chipped, and spread on site. </div> <div> <input type="checkbox"/> 10. Other (see comments). </div>		<p>Comments and Instructions: Brush clearance is a year round requirement. Maintain your property in compliance so it does not spread or add to the intensity of the brush fire. Every hazard of your property may not have been documented on this notice, but it is the land owner's responsibility to ensure all hazards are cleared from their property.</p>	
Los Angeles Fire Department Brush Clearance Unit 6262 Van Nuys, Blvd. #451 Van Nuys California 91401		To view the status of your parcel: vms3.lafd.org To view brush clearance info visit: lafd.org/brush To verify your property lines visit: zimas.lacity.org Phone: 800 994 4444 Kristin M. Crowley, Fire Marshal	



City of Los Angeles
FIRE DEPARTMENT
SECOND NOTICE OF NONCOMPLIANCE



F-1308

APN: **4383-019-009**
(Map Book-Page-Parcel)

Compliance Due Date: **06/02/2019**

SHAHIN, KARLA
00435 N BEVERLY DR **STE 208**
BEVERLY HILLS CA 90210

1st Inspection Date: **05/11/2019**
2nd Inspection Date: **06/27/2019**
2nd Notice Printed: **06/28/2019**
Inspector Id: **32960**
Fire Station District: **99**

Hazard Location:
00000
00000

An inspection of the parcel indicated above has confirmed that brush clearance progress is not complete on your property as per the Fire Code (L.A.M.C. Section 57.322).

In accordance with the Fire Code, you are required to maintain, as described below, **all native brush, weeds, grass, trees and hazardous vegetation on your property within 200 feet of all structures**, whether those structures are on your property or adjoining properties, and within **10 feet of any combustible fence or any roadway/driveway used for vehicular travel**. Please see the specific violations checked below:

- ☒ 1. **Maintain all weeds and grasses at a maximum height of 3 inches.**
- ☒ 2. **Maintain the lower 1/3rd of trees and shrubs by removing all leafy foliage, twigs, and branches up to a maximum of six feet from the ground (i.e., any tree 18 feet or higher requires only 6 feet of clearance).**
- ☐ 3. Remove all dead trees, shrubs and vegetation.
- ☐ 4. Maintain all weeds/grasses at a maximum height of 3 inches and all other vegetation located within 10 feet of any combustible fence or any roadway/driveway used for vehicular travel.
- ☐ 5. Maintain 5 feet of vertical clearance between roof surfaces and portions of overhanging trees and shrubs (i.e., any overhanging foliage must be at least 5 feet above the roof).
- ☐ 6. Remove any portion of a tree or shrub within 10-foot radius of a chimney outlet.
- ☐ 7. Maintain the roofs of all structures free of leaves, needles, twigs and other combustible matter.
- ☐ 8. Remove all dead/dry undergrowth and material within trees and shrubs. See comment section for further guidance to determine IF your landscape vegetation requires additional clearance. Comments will indicate additional items required.
- ☒ 9. **Once brush clearance is conducted, remove and safely dispose of all cut or bagged vegetation, all dead trees, and all debris (includes combustible rubbish and trash). In lieu of disposal, cut vegetation may be machine processed, chipped, and spread on site.**
- ☐ 10. Other (see comments).

Next Action:

Your property was found non-compliant at the time of this re-inspection and is now subject to a **Noncompliance Fee of \$508.00** (subject to change). The property has been posted with a Notice to Abate a Public Nuisance and Fire Hazard. The City may complete the work on your behalf and bill you for **the cost of the work (TBD) plus an Administrative Processing Fee of \$1,312.00** (subject to change). Upon City Council confirmation and recordation of that order, a lien may be attached to the above parcel to be collected on the next regular tax bill.

Comments and Instructions:

Brush clearance is a year round requirement. Maintain your property in compliance so it does not spread or add to the intensity of the brush fire.
Every hazard of your property may not have been documented on this notice, but it is the land owner's responsibility to ensure all hazards are cleared from their property.

To view the status of your parcel: vms3.lafd.org
To view brush clearance info visit: lafd.org/brush
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