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February 11, 2013

William Roschen, President
City Planning Commission
City of Los Angeles
Room 272
200 North Spring Street
Los Angeles, CA 90012

Re: ***Curtis School Expansion*, 15871 W. Mulholland Drive**
CPC-2009-837-CU-SPE-DRB-SPP-SPR-DI-ZV; ENV-2009-836-MND

Dear President Roschen and Commissioners:

This firm represents the Federation of Hillside and Canyon Associations, Inc. ("Hillside Federation") in opposing the Curtis School development project. The Hillside Federation was founded in 1952 and represents 40 homeowner and residents associations spanning the Santa Monica Mountains, from Pacific Palisades to Mt. Washington. The Federation's mission is to protect the property and the quality of life of its 200,000 constituents and to encourage and promote those policies and programs which will best preserve the natural topography and wildlife of the mountains and hillsides for the benefit of all the people of Los Angeles.

The Hillside Federation primarily opposes the Applicant's project because (1) the requested variance from the Baseline Hillside Ordinance's grading limitations and the requested Specific Plan exception from restrictions on the grading of Prominent Ridges are not supported by facts sufficient to meet the statutorily mandated findings; (2) the access roadway that the Applicant plans to cut into the hillside and through Caltrans property was not properly disclosed or analyzed in the project's mitigated negative declaration ("MND") and is inconsistent with the General, Community and Specific Plans and with the Municipal Code; and (3) the so-called "Master Plan" is merely a vague description of the project that fails to disclose aspects of the project with sufficient particularity to permit meaningful environmental review.[1]

[1] The Hillside Federation also joins in the objections raised by the Bel Air Skycrest Property Owners' Association and the Brentwood Residents Coalition in the November 26, 2012 letter from John Given, Esq., a copy of which is attached as ***Exhibit 1***. The Hillside Federation has previously expressed its opposition to the project in letters that are attached as ***Exhibit 2***.

I. The Requested Variance from the Baseline Hillside Ordinance Must Be Denied

The Baseline Hillside Ordinance ("BHO") was recently adopted by the City Council to establish regulations necessary to protect the natural integrity of the City's hillside areas and the neighborhood communities within the hillsides. *Baseline Hillside Ordinance: A Comprehensive Guide to the New Hillside Regulations*, p. 1 (May 9, 2011, City of Los Angeles – Dept. of City Planning) ("BHO Guide").

The administrative record reflects that the BHO was actively and enthusiastically supported by the Santa Monica Mountains Conservancy, State Senator Fran Pavley (23rd Senate District), State Assemblymembers Julia Brownley (41st Assembly District) and Mike Feuer (42nd Assembly District), County Supervisor Zev Yaroslavsky, City Councilmembers Bill Rosendahl (CD-11), Paul Koretz (CD-5) and Tom LaBonge (CD-4), and individual residents and community groups. ***Exhibit 3*** (attaching letters from Council File No. 10-1001). Among the broad array of community groups supporting the BHO were Bel-Air Association; Bel Air Beverly Crest Neighborhood Council Planning and Land Use Committee; Bel Air Skycrest Property Owners' Association; Brentwood Hills Homeowners Association; Brentwood Homeowners Association; Cheviot Hills Homeowners Association; Save Elephant Hills; Encino Neighborhood Council; Federation of Hillside and Canyon Associations, Inc.; Hollywoodland Homeowners Association; Laurel Canyon Association; Lookout Mountain Alliance; Montecito Heights Improvement Association; Mount Washington Homeowners Alliance; Mulholland Scenic Parkway Design Review Board; Nichols Canyon Neighborhood Association; Pacific Palisades Residents Association; Palisades Preservation Association; Residents of Beverly Glen, Inc.; Santa Monica Canyon Civic Association; Shadow Hills Property Owners Association; Sherman Oaks Homeowners Association; Tarzana Property Owners Association; Upper Mandeville Canyon Property Owners' Association; and Westwood South of Santa Monica Blvd. Homeowners Association. ***Exhibit 4***.

The City Council *unanimously* adopted the BHO in March 2011.

The Applicant seeks what would (to our knowledge) be the *first* variance from the BHO's grading limitations. The City cannot properly grant this variance because *none* of the mandated findings can be made. This disqualifying defect is exhaustively demonstrated in John Given's November 26, 2012 letter, pages 11-19, which was submitted to City Planner Franklin N. Quon on behalf of the Bel Air Skycrest Property Owners' Association and Brentwood Residents Coalition, attached as ***Exhibit 1***. This letter builds upon Mr. Given's analysis by further demonstrating that granting this improper variance request would frustrate the hillside protection measures that the BHO was intended to implement.

A. The variance would allow grading far beyond the BHO's limitations

The Applicant's property is within an RE-15 Zone, a single family, low density residential zone. Under the BHO, the cumulative amount of grading permitted on hillside property is limited to (1) a base maximum of 500 cubic yards *plus* (2) the numeric value equal to 5% of the total lot size in cubic

yards. But zones within hillside areas are subject to maximum "by right" limitations that may be less than provided under this formula. In RE-15 Zones, the maximum "by right" quantity is 1,600 cubic yards. LAMC § 12.21.C.10(f)(1); *BHO Guide*, p. 17.

The BHO was designed to discourage variances by providing Zoning Administrators with discretionary authority to deviate from the "by right" grading limitations up to a specified maximum quantity of additional grading. LAMC § 12.21.C.10(f)(4); *BHO Guide*, pp. 18-19. This discretionary formula authorizes the Zoning Administrator to permit an approximate total of 57,611 cubic yards of grading on the Applicant's property. *Proposed Zone Variance Required Findings* (May 31, 2012) ("Proposed Findings"), p. 2.

The Applicant requests a variance that would allow 142,780 cubic yards of grading.[2] This is *90 times* greater than the maximum "by right" quantity and more than *double* the amount that a Zoning Administrator is authorized to permit as a matter of discretion under the BHO. The requested variance therefore represents a huge deviation from the newly-enacted BHO grading limitations.

Moreover, the cumulative grading for this project far exceeds even the disclosed 142,780 cubic yards. The plan calls for the Applicant to carve an access road through Caltrans property and into the hillside, linking Mulholland Drive with the rear of the Applicant's campus. The Applicant has improperly failed to disclose the amount of grading necessary to carve this access road into the hillside. The BHO's grading limitations apply to the entire project, which would include this proposed access road.

B. A variance would undermine the integrity of the BHO's grading limitations

John Given's letter establishes that this Applicant is not eligible for a variance because none of the statutorily-mandated findings can be made. Where, as here, a variance request is not supported by the requisite findings, the granting of a variance despite that defect creates a special privilege for the undeserving applicant, which sets a precedent for the granting of variances to others on the same inadequate basis. That would defeat the public policy underlying the BHO's grading restrictions.

[2] The Applicant provides inconsistent disclosures on the amount of grading that will be required for the project—all of which far exceed what is permitted under the BHO. The MND states that "it is anticipated that full Project build-out would require approximately 142,780 cubic yards of grading." *MND, Attachment A: Project Description,* Section B.4, p. A-13 (June 8, 2012). The Master Land Use Application filed on May 31, 2012 states, in the Project Description, "approx. 125,000 cy of grading all in connection with a master plan to accommodate currently permitted enrollment." The Applicant's Proposed *Zone Variance Required Findings* (May 31, 2012) discloses 111,230 cubic yards of grading.

Variances are designed to assure "parity" of property rights among neighboring property owners within a zone. *Topanga Assoc. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 517 (1974). Thus, "the variance procedure is not to be used to grant special privileges," it "is a means by which to remedy a disparity of privileges." *Stolman v. City of Los Angeles*, 114 Cal.App.4th 916, 925 (2003). A variance from statutory limitations that is granted to a property owner, like this Applicant, who can (and has) put its property to an effective use without a variance creates a "special privilege." Once a special privilege, as opposed to a legitimate variance, is granted to one property owner, his neighbors may seek a variance to achieve parity—thereby defeating the purpose of the underlying statutory limitation. *Broadway, Laguna etc. Ass'n v. Bd. of Permit Appeals*, 66 Cal.2d 767, 775, 780-781 (1967).

This would be disastrous for zoning purposes because the "domino effect" triggered by granting the first special privilege would inevitably lead to further variances, effectively nullifying or impairing the statutory restrictions. *See PMI Mortgage Ins. Co. v. City of Pacific Grove*, 128 Cal.App.3d 724, 731 (1976)(court held that City properly denied variance to subdivide property based on finding that a variance "would serve as a precedent by which neighboring parcels could claim the same privilege to subdivide"); *Rasmussen v. City Council*, 140 Cal.App.3d 842, 849-851 (1983)(variance from condominium conversion limitations properly denied because variance could trigger "domino effect"). This domino effect is inevitable because the government cannot confer a special privilege on some property owners without offering that privilege to others within the zone. *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997, 1009-1010 (2007).

Granting this Applicant a variance when the mandated findings cannot be met would undermine the future application of grading limitations to the hillside areas subject to the BHO throughout the City. That would open the door for the other educational and religious institutions conditionally operating within the residentially-zoned hillside area to bypass the BHO's grading limitations. The nature of hillside areas guarantee that each institution's development options are limited by their topography, giving them all a similar interest in exceeding the BHO's grading limitations.[3] Similarly,

[3] Limitations on institutional development within the Mulholland Corridor imposed significant restrictions on the Stephen S. Wise Temple's Saperstein Middle School: "This 240 student middle school sits on a rugged shelf, carved out of a hillside above the Sepulveda Tunnel in the hills above West Los Angeles. Situated on the Scenic Mulholland Corridor, all the roofs of the building had to sit below the street to protect views and strict sightline restrictions. The sloping site is extremely long and narrow, with a steep hillside to the east and a precipitous drop with maximum sun exposure to the west. The design solution consists of two parallel, single loaded classroom buildings flanking a series of linear outdoor courtyards that act as a village street. Each wing curves with the contours of the hillside while the floor plates follow the regarded slope. The continuous roof angle of the interconnected buildings parallels the slope of Mulholland Drive."
Unique Site Results in Exceptional School, EVO Magazine (Feb. 2012)
http://www.harleyellisdevereaux.com/knowledge/Articles/unique_site_results_in_exceptional_school.

residential property owners within the hillside areas governed by the BHO also have an interest in exceeding the BHO's grading limitations in developing their properties. The surrounding residential areas include Encino Hills, Bel Air Knolls, Bel Air Skycrest, Roscomare Valley and Casiano. Thus, granting the Applicant's variance would not only exceed the limited scope of authority delegated under the BHO, it would also "open the door" to routine variances for institutions and residents seeking "parity" with those who have improperly been granted the special privilege of exceeding the BHO's grading limitations without satisfying the strict hardship requirement for a variance.

C. The BHO's express grading limitations are not subject to an unstated exception for aesthetic impacts characterized as insignificant

The BHO limits grading by imposing *objective limitations* on (1) the number of cubic yards that may be graded on a "by right" basis (LAMC § 12.21.C.10(f)(1)) and (2) the Zoning Administrator's discretionary authority to approve grading in excess of the "by right" amounts (LAMC § 12.21.C.10(f)(4)). Despite the BHO's clear and unambiguous limitations on the cumulative quantity of grading that may be permitted, the Applicant contends that its variance request should be granted because the BHO's grading limitations were not "intended" to limit grading in cases where the aesthetic impact would be "negligible." *See Proposed Findings*, p. 3. The BHO, however, provides no exception for excessive grading that is subjectively characterized as of "negligible" aesthetic impact. Using the variance procedure to undermine the BHO's objective grading limitations—based on a subjective assessment of whether the grading limitations are aesthetically necessary—would improperly subvert the BHO's restrictions.

The "fundamental task of statutory interpretation" is to "ascertain the intent of the lawmakers so as to effectuate the purpose of the law" by *first* "examining the language of the statute." *People v. Cruz*, 13 Cal.4th 764, 774-775 (1996). "Courts first look to the statutory language" because "it is the best indicator of legislative intent." *Williams v. Superior Court*, 5 Cal.4th 337, 350 (1993). "Indeed, the most powerful safeguard for the courts' adherence to their constitutional role of construing, rather than writing, statutes is to rely on the statute's plain language." *Khajavi v. Feather River Anesthesia Med. Group*, 84 Cal.App.4th 32, 46 (2000). In sum, the controlling rules of statutory construction "elevate the objective text of the statute over subjective speculation of legislative intent." *Id.* Thus, "the statute's plain meaning controls the court's interpretation unless its words are ambiguous." *Green v. State*, 42 Cal.4th 254, 260 (2007). "If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent." *Id.*

The BHO's plain language imposes objective limitations on grading, without regard to what the Applicant characterizes as the significant or "insignificant effect on the natural, aesthetic character of the hillsides." The City Council's intent—as determined from the plain, unambiguous language of the BHO—is to prohibit grading in excess of the specifically authorized quantities. Thus, the Applicant's subjective characterization of the grading's significance or insignificance does not justify issuance of a variance to grade in excess of the statutory limits.

Further, the Applicant's mere assertion that its grading would have no potential aesthetic impact is factually unsupported and inconsistent with the Applicant's own admissions. The Applicant's proposed "Director's Determination" (May 31, 2012) reveals important facts that are nowhere referenced in the MND and undermine the assertion that the grading will not significantly impact aesthetics. The proposed grading will necessitate the installation of ***retaining walls*** ranging from 4 to 10 feet high. These 4-10 foot retaining walls will be visible from Mulholland Drive—an aesthetic impact on views within the Mulholland Scenic Corridor that is not even referenced in the MND (in violation of CEQA) nor was it disclosed during the Mulholland Design Review Board proceedings, in violation of the Mulholland Scenic Parkway Specific Plan. According to the Applicant, the portion of the Mulholland Ridge impacted by the 4-10 foot retaining walls necessitated by the excessive grading would be visible within 1,600 linear feet of the Ridge. While the Applicant claims that it will *later* mitigate this impact to some unknown extent by landscaping, the City cannot properly assume that any *deferred mitigation measures* will actually avoid potentially significant impacts of the 4-10 foot retaining walls that are not even disclosed in the MND. Thus, the Applicant's hypothesized aesthetic exception to the BHO's grading limits is not only unauthorized as a matter of law under the BHO, it is also factually unsupportable. The grading/retaining wall impacts also render the project's environmental review inadequate for failure to disclose the potentially significant aesthetic impacts along the Mulholland Scenic Corridor.

The Applicant *also* suggests that the variance procedure may be used to carve another statutorily-baseless "exception" to the BHO's express grading limitations. It implies that the grading limitations should not be applied to the grading of "imported fill." *Proposed Findings*, p. 1. The BHO, however, draws no distinction between fill and any other type of material to be graded in the hillside. "Grading" is defined under the BHO as "any cut or fill, or combination thereof, or recompaction of soil, rock or other earth materials." *LAMC § 12.03*. The definition of "grading" does not exclude imported fill materials. Moreover, the absence of any natural cut/imported fill distinction is further established by the statutory definition of "cut" as "a portion of land surface or areas from which earth has been removed or will be removed by excavation." *Id.* If the grading limitations did not apply to the cutting of "imported fill," the statutory definition of "cut" would have excluded the cutting of imported fill material. The absence of any such distinction in the statutory definitions make clear that the BHO's grading limitations were intended to and must apply to all "cut," without regard to whether it is imported fill material or not.

D. The Applicant cannot establish a legally-sufficient "hardship"

"The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause *unnecessary hardship*; the burden of showing hardship is on the applicant." *PMI Mortgage*, 128 Cal.App.3d at 731 (emphasis added). Hardship can be demonstrated only if the applicant's property cannot "be put to effective use, consistent with its existing zoning, without the deviation." *Stolman*, 114 Cal.App.4th at 926. In determining whether the property can be put to "effective use" without a variance, "it is not significant that the variance[ ] sought would make the applicant's property more valuable, or that [it] would enable him to recover a greater income."

Stolman, 114 Cal.App.4th at 926 (quoting *Hamilton v. Bd. of Supervisors*, 269 Cal.App.2d 64, 67 (1969) (citing *Broadway*, 66 Cal.2d at 775).

The Applicant has not and cannot prove that a variance is necessary to put its property to an effective use. The Curtis School has operated on the property since 1983 and is "one of the largest" elementary schools in the City of Los Angeles, as stated on its website: *http://www.curtisschool.org/about-curtis/history/index.aspx*. The school features "a spacious 27-acre campus" along the Mulholland Corridor. *http://www.curtisschool.org/about-curtis/fast-facts/index.aspx*. The expansive campus, depicted below, makes clear that the Applicant is not so pressed for space that a variance would be necessary to put its property to an effective use.

Indeed, the Curtis School's current enrollment and staffing is higher than any of the neighboring elementary school institutions and its enrollment is surpassed only by the combined enrollment for Stephen S. Wise's Saperstein Middle and Milken High Schools. *See* ***Exhibit 5***. It is also one of the most spacious campuses operating within the Mulholland Corridor. *Id.* Any suggestion that the Applicant cannot put its property to effective use absent a variance is conclusively belied by its admission that (1) it may not complete the parking lot/athletic field "switch" for another *20-30 years* and (2) it intends to continue operating the school on the property within its authorized enrollment

level during that entire time period. Thus, the Applicant intends to operate the school in the same manner as it does today, without moving the athletic field or parking area, for as many as 20-30 more years. (Although the MND estimates that the project will be completed by 2025, the Applicant has represented that it may take as long as 20-30 years due to the need to raise substantial funds.) A variance allowing this "switch" is therefore not necessary for the school's continued operation.

The Applicant nevertheless asserts in its proposed Variance Findings that it will suffer "hardship" absent a variance because (1) there is a "design flaw" in the placement of an access road/parking area between the athletic field and campus structures that exposes children to a safety risk in crossing the road (see image below) and (2) correction of that safety risk in a manner that would be required without a variance would impose an economic hardship. *Proposed Findings*, pp. 1-2.

First, the asserted *safety hazard* is simply that the Applicant chose to lay out its *27 acre campus* in a manner that would require children to cross a road within the campus at a marked crosswalk to access the athletic field. To call this placid crossing a safety hazard is absurd.

Curtis School students have presumably crossed this road safely innumerable times over the past decades. Crossing the Applicant's private parking lot access road at the demarcated walkway poses far fewer hazards than the crossing of public streets. Yet, children from across the country walk to

school every day, crossing public streets far busier and less controlled than this unobstructed road on private school property. Caution must be taught to children when crossing the street just as they must be taught to exercise caution when walking up or down stairs or playing outside on a playground. The need to teach caution does not render the activity hazardous. While the Applicant conveniently asserts that "[w]ithout the variance, the Applicant must retain the unsafe status quo" of the property (*Proposed Findings*, p. 3), the Applicant actually plans to retain the status quo for as many as 20-30 more years. A condition that can be retained for years into the foreseeable future is not properly characterized as a "safety hazard."

But even if the physical layout did pose a safety hazard, any such hazard could be *cured* by any number of modest precautions, including a crossing guard, an array of commonly-used devices, such as on-the-ground and stand-up traffic signs (stop or yield signs), in-ground flashing crosswalk lights, stop lights, speed bumps, or mechanized "arms" to stop traffic. Not surprisingly given the modest expense, the Applicant already uses mechanized crossing arms to protect students crossing the road, stop signs at the cross-walk and crossing guards. (The automatic arm/stop sign are depicted below.) While there would be costs associated with any of these safety precautions, those costs would not support a finding of "hardship." Indeed, the cost of "swapping" the athletic field and parking area under the Applicant's proposal would be exponentially greater than these modest safety measures.

In any event, regardless of the costs of any safety measures, "hardship" cannot be established unless the property cannot be put to an "effective use" without the requested variance. The law is clear, however, that increased operating costs or reduced profits are insufficient to establish hardship as a matter of law. *Stolman*, 114 Cal.App.4th at 926. Thus, even if the crosswalk is unsafe, which the Applicant has not shown, the costs of making it safe are not so great as to preclude the Applicant

from operating the property as a school in precisely the same manner as it has for the past 30 years and it intends to for the next 20-30 years according to its own proposal. The Applicant cannot therefore establish the requisite showing of hardship. *Broadway*, 66 Cal.2d at 775.

E. Application of newly-enacted zoning restrictions are not "unfair" absent vesting

The Applicant contends that denial of a variance would be "unfair" because the project predates passage of the BHO. *Proposed Findings*, p.1. The "vested rights doctrine" is the principle of "fairness" that is implicated when a new statute would preclude or limit completion of a planned development project. *Consaul v. City of San Diego*, 6 Cal.App.4th 1781, 1812 (1992). But vesting applies only "if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon *a permit issued by the government*." *Avco Community Developers, Inc. v. So. Coast Regional Com.*, 17 Cal.3d 785, 791 (1976).

The fact that the Applicant planned to engage in hillside grading before the BHO passed, but did not receive a permit for doing so, means that the Applicant has *no vested right* to grade in excess of the BHO's limitations. *Avco,* 17 Cal.3d at 791-799. Fairness does not weigh in favor of varying newly-enacted land use regulations absent vesting. Thus, even preliminary government approvals that predate passage of land use regulations do not support variances from statutory land use restrictions—much less would the Applicant's mere unapproved plans support a variance. Indeed, "allowing such preliminary approvals [or mere unapproved plans] to determine the permissible use of land could seriously impair 'the government's right to control land use policy.'" *Id.* at 797. For that reason, "[a] government's right to control land use policy cannot be impaired by the 'freezing' of zoning law applicable to a particular development as of the time particular preliminary decisions are made concerning the project." *Consaul,* 6 Cal.App.4th at 1797.[4]

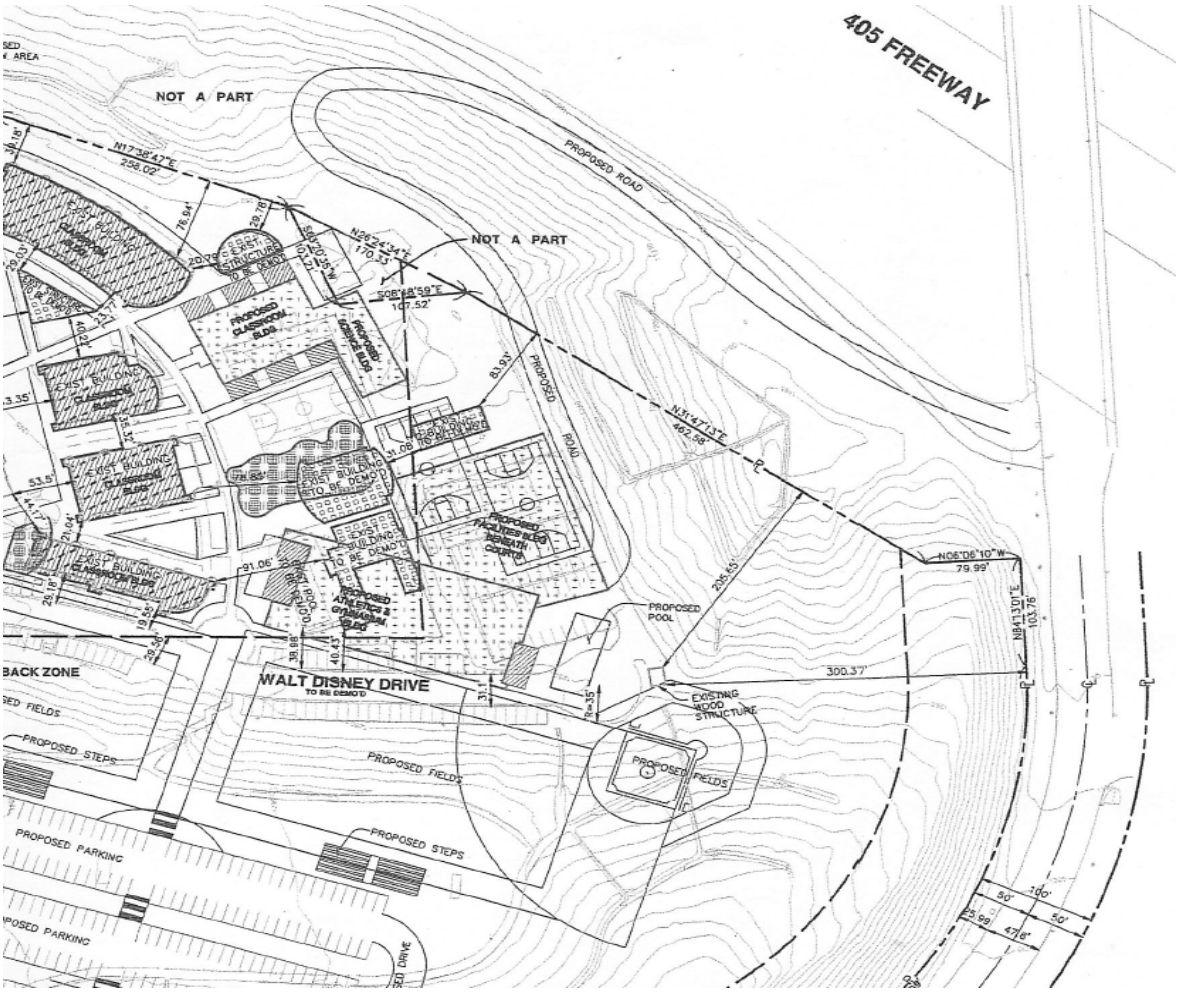
F. The BHO limits the total amount of grading on the property, which precludes issuance of a permit based on only a partial disclosure of the total amount of grading

The BHO applies to and limits the "cumulative" or "total" amount of materials to be graded on the property. *See* LAMC Section 12.21.C.10(f)(1) ("The cumulative quantity of Grading, or the total combined value of both Cut and Fill or incremental Cut and Fill, for any one property shall be limited . . . "). The grading limits do not therefore apply separately to *different phases of a project* on the property. The variance request, however, does not disclose the *total* amount of grading planned for

[4] The Applicant also seeks an exception from the Specific Plan, which precludes the grading of a Prominent Ridge in excess of 1,000 cubic yards. A Specific Plan exception cannot be granted unless the same mandated findings as required for a variance are met. *See* LAMC Section 11.5.7.f(2). Thus, the same failings that preclude issuance of a variance from the BHO preclude a Specific Plan exception for grading in excess of Specific Plan limitations. *See also Given Letter*, attached.

this project because it excludes the grading necessary to carve an access road into the hillside—which is a prominent part of the project.

The access road is described in the MND as a "secondary access road [that] would be used for service vehicles, construction access, and emergency egress." *MND, Attachment A: Project Description*, B.2, p. A-12. The MND also states that secondary emergency access is already available via Mulholland Place. *MND, Attachment B: Explanation of Checklist Determinations*, pp. B-89. At the public hearing, however, the Applicant disclosed for the first time that the road would also be used for faculty and staff access and parking. And in a meeting in Councilmember Koretz's Office, the Applicant disclosed for the first time that the roadway would be illuminated until 10:00 p.m. on a daily basis. The Applicant has also submitted plans (below) depicting the roadway as entering what would be a "proposed facilities bldg. beneath [the basketball] courts."



Identifying the "Proposed Road" on Caltrans property (below the 405 freeway).

For purposes of assessing environmental impacts, a "project" includes "the whole of an action" that may result in either a direct or reasonably foreseeable indirect physical change in the environment. *CEQA Guidelines* (Cal. Code Regs., tit. 14, § 1500 et seq.), Section 15378. There is no question that this planned roadway/parking area is part of the Applicant's development project. The roadway is identified in the MND as a supposed project benefit because it would provide secondary access (although secondary access is already available via Mulholland Place). But there is no information in the MND (or anywhere else) about the *grading* that would be necessary to construct this roadway or any parking area.

The MND is therefore deficient under CEQA for failure to address this grading. A variance from the BHO's grading limitations *cannot even be considered* absent full disclosure of the entire scope of grading planned for this development project, including the grading needed for the access road and parking area.

II. The MND Did Not Analyze The Proposed Road's Potentially Significant Aesthetic and Wildlife Impacts, Which Violate The General, Community and Specific Plans

Even apart from the grading impacts, the Applicant's plan to use Caltrans property as a private road and parking area has other potentially significant environmental impacts that are not disclosed, analyzed or mitigated in the MND. The *significance* of the aesthetic and wildlife impacts likely to result from the Applicant's plan to carve a roadway into the hillside are measured by their inconsistency with the controlling planning documents—the General Plan, the Encino-Tarzana Community Plan and the Mulholland Scenic Parkway Specific Plan. CEQA requires that the MND be rejected and that the Applicant prepare an EIR that would properly disclose the potential impacts, consider less impactful alternatives, and recommend measures to mitigate the environmental impacts.

A. Undisclosed Facts About Caltrans' Public Facility-Zoned Property and Caltrans' Intent To Return The Property To Landscaped Open Space

The Caltrans property through which the roadway would traverse has a Public Facilities (or "PF") zoning designation. The PF Zone provides "regulations for the use and development of publicly owned land in order to implement the City's adopted General Plan." *LAMC Section 12.04.09*. The Zoning Code limits the use of PF-zoned property to the "public" uses specified under Section 12.04.09.B. The public uses to which PF-zoned property can be put have one element in common—all uses benefit the public generally, not private interests. Those uses include public (not private) parking facilities, libraries, health facilities, and "*Public* elementary and secondary schools." *LAMC Section 12.04.09.B.9* (emphasis added). Other permitted uses are for government buildings, structures, offices and service facilities, including government "maintenance yards." *LAMC Section 12.04*.09.B.

The Caltrans property is currently a temporary staging area for the I-405 Sepulveda Pass Project. This temporary operation is a "public use" that is consistent with the PF zoning designation. At the end of the construction project, Metro plans to restore such areas to landscaped Open Space to

avoid permanent environmental impacts that would otherwise result.[5] Metro representative Ron Macias confirmed that, pursuant to the EIR's mandated mitigation directive, the Caltrans property that is being temporarily used as a staging area will be landscaped and returned to Open Space after completion of the project. ***Exhibit 7*** (email correspondences from R. Macias, Metro). While the Caltrans property is not specifically identified in the EIR, Macias explained that is because "many of the construction yards and staging areas [including the Caltrans property below the Curtis School] are not identified in the EIR because it wasn't known that they would be yards or areas for staging equipment and materials that far in advance of the beginning of the project. Landscape plans for such areas have not been developed and finalized just yet. Caltrans has informed me that these are being addressed now." *Id.* Those restoration plans are still "in the early stages of development." *Id.*

The Applicant, however, plans to use the Caltrans property as a private road for its own benefit, which is not a use that is authorized under the PF zoning designation. The Applicant's MND states that it plans to use the Caltrans property for its own private benefit as a road providing secondary access to its private school. The Applicant would use the privatized road for its service vehicles, construction access, and emergency egress. *MND, Attachment A: Project Description, p. A-12*. Although the proposed road would provide secondary access to the Applicant's campus, the MND reveals that there is already secondary access to the campus through Mulholland Place on the west side of the campus. *MND, Attachment A: Project Description*, p. A-4.

The proposed roadway would be carved into the natural hillside connecting Mulholland Drive to the Applicant's campus. The Applicant has subsequently represented that the proposed roadway over Caltrans property would also be used by members of its faculty and staff to access the campus. They would park either on Caltrans property or in a facilities building/parking area under the basketball courts. The Applicant has recently disclosed (in a meeting at Councilmember Koretz's Office) that it intends to illuminate the roadway until 10:00 p.m. None of these details were provided in the MND.

The Applicant has also emphasized in meetings and hearings that it provides heightened security on campus given the celebrity status of many parents. This raises the question—not answered in the MND or anywhere else—of what security features will be constructed on the Caltrans property if it is used to access the Applicant's campus. This is significant because the Caltrans property is within view of scenic Mulholland Drive. It foreseeable that fencing, gating, and other security devices and

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[5] The I-405 Sepulveda Pass Project EIR recognizes that, in order to comply with the federal policy "to preserve the natural beauty of the countryside and public park and recreational lands," as codified under Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. §303), any property that is being used *temporarily* for the I-405 Sepulveda Pass Project must be "restored to a condition that is at least as good as that which existed" before the project began. *See* ***Exhibit 6*** (select portions of I-405 Sepulveda Pass Project EIR/EIS & Section 4(f) Evaluation); see generally http://www.dot.ca.gov/dist07/resources/envdocs/docs/I405_SepulvedaPass_IR_EIS.pdf (Draft EIR/EIS); http://www.dot.ca.gov/dist07/resources/envdocs/docs/Final%20LA405DOC_022208.pdf (Final EIR/EIS).

structures will be constructed or installed on and along the Caltrans property. But there is no disclosure of what precisely will be constructed and how it will impact the scenic area.

B. The Roadway's Potentially Significant Impacts Are Not Adequately Addressed In The MND, Thereby Precluding Project Approval

An MND has been prepared for the Applicant's 20-30 year development project. But under CEQA an EIR is required whenever a "fair argument" can be made that significant environmental impacts may occur. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974). This sets a "low threshold" for requiring preparation of an EIR. *Id.* at 84. As established above, an EIR is required for the project due to the grading impacts alone. But an EIR is also required due to the aesthetic and wildlife impacts likely to result from the proposed roadway, even apart from the grading impacts.

California courts recognize that aesthetic impacts are properly subject to environmental review. "Under CEQA, it is the state's policy inter alia to '[t]ake all action necessary to provide the people of this state with ... enjoyment of *aesthetic,* natural, scenic, and historic environmental qualities.' ([*Res. Code]* § 21001(b). The CEQA initial study checklist asks four questions as to aesthetic impact, including whether a project will '[s]ubstantially degrade the existing visual character or quality of the site and its surroundings.' (*CEQA Guidelines*, Appx. G, § I, subd. (c).)'" *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 936-937 (2004). Thus, "[a]ny substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA." *Ocean View Estate Homeowners Ass'n*, 116 Cal.App.4th 396, 400 (2004). CEQA also requires consideration of a project's environmental impacts on wildlife habitats and movement. *CEQA Guidelines*, Appx. G, § IV.

An assessment of "significance" under CEQA calls for careful judgment based to the extent possible on factual or scientific data or guidelines. But "an ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." *CEQA Guidelines*, Section 15064(b). In assessing the significance of impacts, the controlling planning documents provide invaluable guidance on the importance of aesthetic matters in the given setting. Here, the environmental significance of carving a road into a scenic hillside visible from the Mulholland Scenic Parkway, the Mulholland Bridge, and several residential communities in close proximity to the area is properly measured by the controlling planning documents, which expressly address the aesthetic issues implicated by the project. As demonstrated below, the proposed road is inconsistent with the City's General Plan, the Encino-Tarzana Community Plan, and the Mulholland Scenic Parkway Specific Plan.

The Caltrans property from which the access roadway would be graded is located directly below the campus, where it is currently being used by Caltrans as a staging area for the I-405/Sepulveda construction project.

C. The Plan To Use Caltrans' Public Facility-Zoned Property For A Private Roadway/Parking Lot Is Inconsistent with the General, Community and Specific Plans

The General Plan. The "purpose" of the PF Zone is to regulate the use of land in conformity with and as an implementation of "the City's adopted General Plan." *LAMC Section 12.04.09.A.* Publicly-owned land must therefore be used for the "public" purposes specified under LAMC Section 12.04.09.B. Any other use of PF-zoned property would be inconsistent with the General Plan.

The Applicant proposes to use the PF-zoned property for a private purpose that is inconsistent with the zoning. While public schools fall within the scope of PF zoning, private schools do not because they confer no general public benefit. To transform PF-zoned land that would otherwise be landscaped and returned to visual Open Space into a private street and private parking lot in service

of a private school violates the PF zoning and is therefore inconsistent with the General Plan. Indeed, allowing a private use of public land in a PF Zone would violate the City's zoning laws, which preclude any such use in a PF Zone. That alone precludes any approval of the road.

The Community Plan. The Encino-Tarzana Community Plan "broadly define[s]" Open Space "as land which is essentially free of structures and buildings and/or is natural in character and which functions in one or more of the following ways: … (2) Scenic, cultural and historic values. … (6) Preservation of natural resources or ecologically important areas. … (7) Preservation of physical resources including ridge protection. … (8) Preservation of access to all open space areas for the use and enjoyment of the general public." *Encino-Tarzana Community Plan*, p. III-13.

The Community Plan states that "Open Space is important due to its role in both physical and environmental protection." *Community Plan*, p. III-12. Thus, Objective 5-1 of the Community Plan is "[t]o preserve existing open space and where possible develop new open space." Consistent with that Objective, Policy 5-1.1 is to "[e]ncourage the retention of passive and visual open space which provides a balance to the urban development of the Plan Area."

Metro's plan to landscape and restore the Caltrans property into natural Open Space after completion of the I-405 Sepulveda Pass Project as required by the I-405 Sepulveda Pass Project EIR is obviously consistent with Objective 5-1. Significantly, this Open Space will be visible from Mulholland Drive, a designated scenic highway within the Mulholland Scenic Parkway. The Open Space property will also be visible from the 405 freeway and in the communities above Mulholland Drive, to the east of the 405 freeway. The plan to landscape and return the Caltrans property to Open Space thereby provides passive and visual Open Space in a scenic area where it can be appreciated by the general public, in conformance with the Community Plan.

By contrast, the Applicant proposes to use the Caltrans property in a manner wholly inconsistent with the Open Space uses authorized under the PF Zone and encouraged by the Community Plan's policies and objectives. Instead of returning the Caltrans property to landscaped Open Space, the Applicant would grade a private road into the hillside, install street lighting, provide private parking along the hillside road or connect the road to an underground parking lot, and create a security area to prevent public access onto the private campus. This would degrade the view from Mulholland Drive, the 405 freeway and communities east of the 405 freeway. This use and these impacts are grossly inconsistent with Community Plan Objective 5-1 and Policy 5-1.1.

The Specific Plan. The Mulholland Scenic Parkway Specific Plan was established to "assure maximum preservation and enhancement of the [Mulholland] parkway's outstanding and unique scenic features and resources," including the "spectacular" mountain views. *Specific Plan*, pp. 2-3. The Specific Plan provides "land use and design controls tailored to the physical character of the Mulholland Scenic Parkway and Santa Monica Mountains." *Id.*, p. 1. Among its purposes are (1) to assure the design and placement of buildings and other improvements to "preserve, complement and/or enhance views from Mulholland Drive;" (2) "to minimize grading and assure that graded

slopes have a natural appearance compatible with the characteristics of the Santa Monica Mountains;" (3) "to preserve the natural topographic variation within the Inner and Outer Corridor;" (4) to reduce the visual intrusion caused by excessive lighting; (5) to protect prominent ridges and topographical features; (6) to protect "the existing ecological balance"[6]; and (7) provide a review process for all projects that are "visible from Mulholland Drive to assure their conformance to the purposes and development standards contained in the Specific Plan." *Id.*, pp. 3-4.

Use of the Caltrans property as landscaped Open Space that is visible from Mulholland Drive, from and across the 405 freeway, and above Mulholland is fully consistent with the Specific Plan's objectives. Specifically, use of the Caltrans property as landscaped Open Space enhances views from Mulholland, minimizes grading, assures retention of the natural topography, provides no visual intrusion of artificial lighting into the natural landscape, protects the natural topographical features, and preserves the ecological balance by maintaining and enhancing wildlife corridors—all in conformity with the purposes and development standards in the Specific Plan.

By contrast, the Applicant's proposed use is inconsistent with all of these Specific Plan objectives. Specifically, the Applicant would impair the views from Mulholland Drive and from/across the 405 freeway by grading a parking lot, security structure, fencing and paved roadway into the natural hillside. It would grade the hillside to an undisclosed extent by cutting the road into the hillside and grading either a parking lot on the Caltrans property or in a below-grade parking facility on the campus that would be fed by the road traversing Caltrans' property. The natural topography would be sacrificed in constructing the roadway, parking facility and security structure. Security fencing and an illuminated roadway would interfere with wildlife crossings know to occur in the vicinity. *See also* Santa Monica Mountains Conservancy letter, attached as ***Exhibit 8***.

There is another foreseeable impact—the Applicant's use of the Caltrans property as a perpetual construction staging area over the 20-30 year period that the Applicant's wide-ranging construction project may last. The Applicant has represented that it plans to use the Caltrans property for staging, transforming what would otherwise be landscaped Open Space to a constant eye-sore within the Mulholland Scenic Parkway.[7]

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[6] The Mulholland Scenic Parkway Specific Plan Design and Preservation Guidelines provide, under Guideline 13, for the protection of wildlife corridors and habitats: "Projects that are near parks and wildlife corridors should be sensitive to preserving wildlife habitats and the ecology of the Scenic Parkway. Fencing should be placed to not interfere with wildlife movement."

[7] The Bel Air Skycrest Property Owners' Association has also demonstrated that the road would likely creates traffic impacts that have not been disclosed, analyzed or mitigated. ***Exhibit 9*** (testimony of representatives Lois Becker and Mark Stratton).

The aesthetic and wildlife impacts likely to result from the proposed road were recognized by the Mulholland Design Review Board. At the July 19, 2012 DRB hearing, the Board recommended that the Applicant redesign its project to avoid any use of the Caltrans property: "Prior to returning to the DRB with a future project, the school will present to the Board an agreement with the [Santa Monica Mountains Conservancy] on a wildlife corridor and provide an alternative location for the access road that goes through school property only." ***Exhibit 10***.

D. The Roadway Impacts Would Be Significant, Rendering The MND Inadequate

There is no question that a "fair argument" can be made that the proposed hillside roadway would have significant aesthetic and wildlife impacts when measured against the land use policies established in the controlling planning documents. An EIR is therefore required. *Pocket Protectors*, 124 Cal.App.4th at 936-939.

III. The MND Must Be Rejected Because The "Master Plan" Is A Mere Trojan Horse Designed To Subvert Meaningful Environmental Review

The "Master Plan" purports to be a development plan for an expansion of the Applicant's facilities without any intensification of use. Throughout the Master Plan and the MND that would "rubber stamp" that Plan, the Applicant claims an intent to maintain enrollment at the currently-authorized levels. But the dramatically intensified infrastructure that would exist upon implementation of the Master Plan would inevitably serve as the foundation for future approval of much larger enrollments and a far greater intensity of use on the property than currently exists. In that manner, the Master Plan functions as Trojan Horse for the type of intensification that necessitates thorough environmental review through the EIR process.

Specifically, the Master Plan calls for the following infrastructure "improvements" that would accommodate substantial growth and intensification: (1) A *doubling* of square footage for the buildings on campus (from 60,570 square feet to 126,840 square feet); (2) Increased parking capacity from 136 spaces to 213 disclosed spaces, which is a 64% increase in parking capacity and 99 more parking spaces than is legally required under its CUP for the same authorized enrollment—plus whatever additional parking capacity is planned for (but not disclosed) on the Caltrans property; (3) A new major roadway access onto the campus that will not just provide "secondary access" (which already exists via Mulholland Place) but would also provide primary access for faculty and staff; (4) Substantially expanded athletic field facilities (as is evident from visual inspection of plans that should but do not provide square footage comparisons); and (5) The Caltrans property, which adds to the Applicant's usable space and can accommodate future construction staging, additional parking, and increased access onto the campus.

While the Applicant states that it does not intend to grow, just accommodate the existing enrollment, that assurance comes with a caveat rendering it meaningless: The MND reveals that the so-called Master Plan is merely a "Conceptual Development Program" that "represents one of the

possible ways the Project may be developed" and that "actual development would be governed by future market conditions and the needs and demands of the Project Site." *MND, Attachment A: Project Description*, p. A-6. Once the project is completed, the Applicant will inevitably claim that "market conditions" effectively "demand" that such a large campus, with so much capacity and infrastructure, must grow its enrollment (or rent/lease its facilities to third parties) to remain economically viable. This represents a *Field of Dreams* planning policy—"if you build it, they will come." How can "market conditions" and principles of efficiency not dictate a need for growth to accommodate all the increased capacity. So the Applicant's assertion that it has no current plan to grow its enrollment really means nothing because its "market conditions" caveat would justify substantial growth once the project is completed and the additional infrastructure and capacity is created.

The MND, however, improperly ignores that the Master Plan would create a tremendous capacity for growth and intensification of use. That increased capacity makes such growth and intensification a *reasonably foreseeable* consequence of the project. The Supreme Court has ruled that environmental review must account not just for the applicant's plans, but also for the reasonably foreseeable impacts of project approval, including growth-inducing impacts. *Laurel Heights Improvement Assoc. v. Regents*, 47 Cal.3d 376, 393-396 (1988). Here, the enhanced capacity and infrastructure that approval of the Master Plan would permit creates reasonably foreseeable growth inducing impacts that must be, but have not been, subjected to meaningful environmental review. An EIR is therefore required.

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The Application must be denied because (1) there is no basis for granting a variance from the BHO's grading restrictions or an exception from the Specific Plan's limitations on the grading of a Prominent Ridge; (2) the proposed development of Caltrans property for a private road and parking area would violate the applicable zoning restrictions, is inconsistent with the controlling land use documents, and was not properly subjected to the requisite level of environmental review; and (3) the so-called Master Plan is merely a vague conceptual plan that would increase the capacity and infrastructure for future growth, a reasonably foreseeable consequence that must be (but was not) subjected to environmental review in an EIR.

Very truly yours,

Thomas R. Freeman

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