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June 17, 2013

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Re: **Application for Coastal Development Permit**
ENV-2012-131-MND (revised) dated June 17, 2013 , Case No. ZA-2012-130-CDP
Project at 16990 - 17000 Sunset Blvd., Pacific Palisades, CA 90272

Dear Mr. Skolnick and Ms. Navarrete:

This letter is written to express the serious surprise and disappointment that we and our neighbors experienced when we received the proposed Mitigated Negative Declaration dated June 17, 2013 (the “MND”) issued by your office. Having studied the proposed Project in some detail and submitted comments on the original MND, we anticipated that your office would consider and address the many concerns raised by the community regarding the safety and appropriateness of this development. We are puzzled and concerned by the failure of the revised MND to even acknowledge, much less satisfactorily respond to, those concerns.

The concerns previously expressed, as well as those stated below, should at a minimum be addressed by requiring a Focused Environmental Impact Report (EIR) commensurate with what the letter and the spirit of the law require. ***The current MND entirely fails to:***

- (a) accurately describe the existing conditions of the site and vicinity;

- (b) accurately assess the potential impacts of the Project on the environment;
- (c) reflect due consideration of the Project's location on a coastal bluff; or
- (d) demonstrate the effectiveness of proposed mitigation measures that are supposed to be addressed *prior to* the issuance of an MND and be available for review as part of the MND, but here are only called for in the future. This proposed sequencing of approvals is impermissible under CEQA.

We and our neighbors hope that your open-minded, even-handed review of the following comments will produce a more thorough and thoughtful evaluation of this very significant development. The focused EIR must, at a minimum, address the areas of the MND discussed below. In addition to these comments, we refer you to and incorporate by reference the substantial prior and current public comments on the prior and revised MND and the Applicant's Response to Comments Report, including those submitted by the Pacific Palisades Community Council and geological experts.

Approving this MND in haste, without proper study and due diligence, and in the face of the opinions of experts and informed citizens to the contrary, can only expose the City to potentially enormous liabilities. In addition, and more importantly, it will expose the neighboring community to risks to their lives and property.

I. LAND USE AND PLANNING (Section X) and AESTHETICS (Section I)

The MND incorrectly concludes that the Project does not conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project, and incorrectly assesses the aesthetics of the Project in several important respects.

A. The MND completely ignores the fact that the Project does not comply with all of the requirements of the [Q] Conditions, and instead incorrectly states that the Project is allowed as of right.

Section 2.B. of the [Q] Conditions that apply to the Project states as follows:

“Setbacks: For any building or structure which is *within 50 feet of a lot zoned R1 or more restrictive*, the exterior wall of any second story *shall be* set back 10 feet horizontally from the exterior wall of the first story facing the lot zoned R1 or more restrictive.”
(Emphasis added.)

Both the City and Applicant have acknowledged that Section 2.A of the [Q] Conditions applies to the Project, and that both Sections 2.A. and 2.B apply to “any building or structure within 50 feet of a lot zoned R1 or more restrictive.” (LAMC Ordinance No. 170768.) Accordingly, it is clear that the second floor setback requirement of [Q] Condition 2.B. also applies to the Project.

That Section 2.B. requires the *entire* second floor of the structure to be set back 10 feet from the first floor. It does *not* limit the set back to merely that *part* of a building or structure within 50 feet of any lot zoned R1 or more restrictive.” This is made clear by comparing the language of Section 2.B. with that of the Height restriction set forth in the immediately preceding Section 2.A. -- which provides that “*any part* of a building or structure within 50 feet of any lot zoned R1 or more restrictive shall not exceed a maximum height of 30 feet . . .” Section 2.B. must accordingly be understood to state that a setback is applicable to the *entire* “building or structure,” under the fundamental rule of interpretation that requires that every part of a statute or regulation be presumed to have some effect and not be treated as meaningless surplusage. *See, e.g., People v. Arias*, 45 Cal. 4th 169, 180 (Cal. 2008) (“Significance should be given, if possible, to every word of an act.”). Were Section 2.B. interpreted to apply only to “any part” of a structure within 50 feet of an R1 zone even though the term “any part” does not appear in it, the presence of that term in Section 2.A. would be rendered unnecessary, in violation of that rule.

The applicant’s own rendering of the side of the Project that faces the RE40 property shows that there is *no* setback of the second story as required by the [Q] Condition.



The MND completely ignores this failure to comply with applicable land use regulations.

In addition, a 3-D rendering of the Project must be required prior to approval of the Project in order make an accurate assessment as to which floors will daylight on the down slope side of the Project.

- B. The MND entirely disregards the fact that the proposed development is in the Coastal Zone -- triggering significant alteration of landform restrictions, density limitations and setback requirements and requiring closer scrutiny of the Project’s visual impact.**

Another very troubling aspect of the MND is its failure even to address the fact that the Project site is in the Coastal Zone. The only mitigation measure required under Land Use

and Planning is to “Secure Haul Route Approval” – which measure itself constitutes impermissible sequencing under CEQA.

The Project is situated on a coastal bluff -- a fact is confirmed by the City of Los Angeles’ Initial Study and Checklist dated December 22, 2010 for the nearby Coaloa project, in which (under Environmental Settings) the City states that the 17030 Sunset property “is within 300 feet of the top of the seaward face of a coastal bluff.” The Project, located less than 100 yards from the proposed Coaloa development, is on the same coastal bluff. Indeed, Sassan Geosciences (“Sassan”), the geotechnical consultant for the applicant, *itself* expressly confirmed that the site is a coastal bluff when it stated the following regarding the Project site: “The wave cut platform or terrace is bounded on the south by a relatively steep slope, **often referred to as a coastal bluff... . . . The coastal bluff was formed by wave action prior to the development of Pacific Coast Highway . . .**” (Sassan, Preliminary Technical Report dated November 16, 2009, p. 4, emphasis added).

The Project also is undeniably within the Coastal Zone. Therefore, it must comply with all provisions of the California Coastal Act, the Regional Interpretive Guidelines (the “Guidelines”) and all decisions of the California Coastal Commission. It fails to do so. The Project, at a minimum, is in violation of the following requirements of the Guidelines:

- 1. The Project greatly exceeds the allowable density for a development in the Coastal Zone -- contemplating nearly double the permissible density.**

Under the Coastal Commission’s Regional Interpretive Guidelines, since the Project is within the Coastal Zone, it may not exceed a density of 24 units per acre. We understand that the Project site has a total area of less than 52,000 square feet, or approximately 1.2 acres. Therefore, the maximum permitted density is 28 units. The Project is proposed for 49 units, or nearly twice the density permitted. The MND makes no mention at all of this restriction or of the Project’s failure to comply with it.

- 2. The Project also violates the setback requirement for developments on coastal bluffs.**

In addition, the Project design plainly violates the setback requirements of the Guidelines that are applicable to developments situated on a coastal bluff. Indeed, it entirely ignores those requirements.

Under the provisions in the Guidelines for Bluff Top Development, proposed development upon a coastal bluff must be set back at least 25 feet from the edge of a coastal bluff. The Project necessarily contemplates *zero* setback: it will be situated directly on and within the bluff. Again, the MND makes no mention of this restriction or of the Project’s failure to comply.

3. The Project also violates the Alteration of Landform restrictions set forth in the Guidelines.

The Guidelines provide that throughout the Coastal Zone “Grading, cutting or filling that will alter natural landforms (bluffs, cliffs, ravines, etc.) should be prohibited.” This requirement is not addressed in the MND. We believe that the plans your office has reviewed show that the Project will necessarily alter the natural features of the site, and so “should be prohibited.”

4. The Project also fails to comply with the requirement of a cascading design for developments on coastal bluffs, and fails to take proper account of the visual impact it will have on coastal visitors.

The MND also fails to address the lack of compliance with Coastal Act provisions requiring cascading design in Section X, and fails to accurately assess the aesthetics of the Project.

As noted in our prior letter, Sunset Boulevard is a designated Scenic Major Highway, Class II. From atop the bluff, the Project site is one of the two major unobstructed public ocean views from this stretch of Sunset Boulevard until it intersects Pacific Coast Highway, affording motorists and pedestrians a unique view of the Pacific Ocean and Catalina Island. This view will be obliterated by the Project:

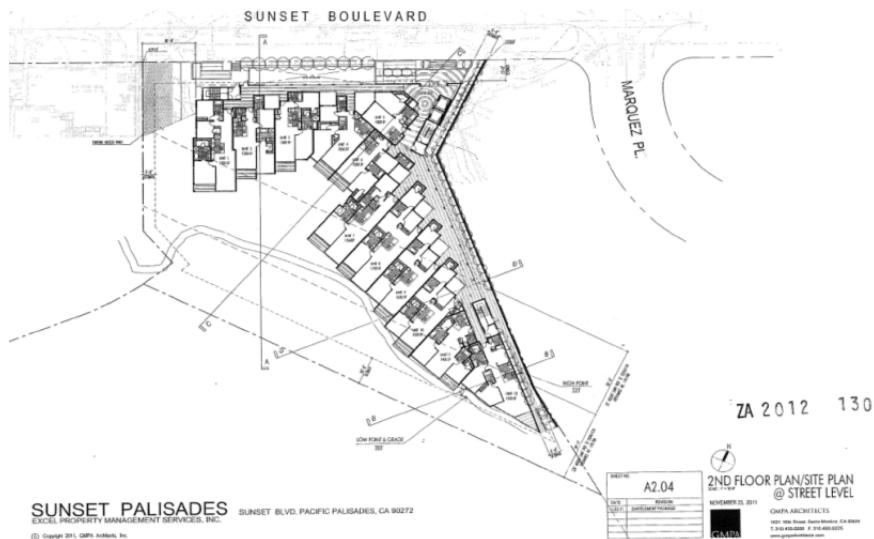


In addition, from the perspective of pedestrian, vehicular and recreational users and travelers along Pacific Coast Highway, the adjoining beach and the Pacific Ocean, the Project does not cascade down the bluff from the street as required by the Alteration of Landform provisions in the Guidelines. To the contrary, it will rise as a uniform wall 43 feet high from street level, at a setback of only 15 feet along over 75% of the property fronting the scenic Sunset route, and thus will protrude as a large mass significantly above the existing bluff-top grade as viewed from the beach and ocean.

Impacts on views from Sunset Boulevard, Marquez Avenue and the bluff top looking toward the ocean, as well as from the coast and the ocean looking toward the land, are required to be considered in evaluating the Project. The Coastal Act expressly requires that “[t]he scenic and visual qualities of coastal areas **shall be** considered **and protected** as a resource of public importance. Permitted development **shall** be **sited and designed** to protect views **to and along** the ocean and scenic coastal areas . . .” (Coastal Act § 30251, emphases added.) The Coastal Act also provides that “[n]ew development **shall** . . . where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are **popular visitor destination point for recreational users.**” (Coastal Act § 30253(e), emphases added.) The Guidelines also provide that “Views to the shoreline and the Santa Monica Mountains from public roads should be preserved and protected.”

In addition to lying along a heavily traveled Scenic Major Highway, the Project is less than 250 yards -- a four-minute walk -- from the Self-Realization Fellowship retreat and Lake Shrine located on the south side of Sunset Boulevard at number 17190 Sunset. The Lake Shrine facility has long been a popular year-round destination for both local residents and visitors. Many of these visitors access the facility by parking in the Marquez Knolls area north of Sunset Boulevard at Marquez Avenue, crossing Sunset at Marquez (there is no sidewalk or usable shoulder on the north side of Sunset west of Marquez), and walking east along *the entire frontage of the Project*, as illustrated in the photograph above. This substantial recreational pedestrian traffic will thus lose the **entire** unique view corridor to the Pacific Ocean as pictured above.

The Aesthetics Section of the MND (Sections 1.a. and 1.b.) contains the **patently false statement** that, “the project design incorporates site placement and massing which will preserve a southerly view of the Pacific Ocean from Sunset Boulevard along the eastern side of the property.” Along the entire eastern side of the property, the Project extends all the way to the 10-foot minimum required side yard boundary. Since the eastern lot line of the property angles to the south (see the Second Floor Plan @ Street Level below) and goes behind the southerly neighboring building on Marquez Place (not drawn on Plan below) all views of the Pacific Ocean along the eastern side will be obscured by the Project, so the public view of the ocean coming down Marquez Avenue will be eliminated.



The MND also falsely states that the project will be visually compatible with the character of the surrounding area. The proposed project is in no way visually compatible with the surrounding area. Its fortress-like design rising as a uniform wall along Sunset, and its consistent large volume and mass along Sunset, are not compatible with the surrounding area that includes single-family residences across Sunset Boulevard. The proposed project also is far larger than and visually incompatible with the existing multi-family developments on the south side of Sunset.

5. Low-Income Housing

Finally, the applicant has not included plans for Mello Act compliance. In the affluent area of the proposed project, affordable housing is scarce, and our community would like to review the applicant's plans for the provision of affordable housing on this site.

II. TRAFFIC (Section XVI)

The MND disregards the significant traffic hazards at the site, which will be exacerbated by the Project.

The Project's location at the intersection of Marquez Avenue and Sunset Boulevard is locally known as the entrance and exit of "Dead Man's Curve," long and still the scene of many serious accidents. The long straightaway east of the intersection leads motorists, particularly motorcyclists, to enter the intersection at unusually high speeds at all hours. That was the cause of the most recent fatal accident immediately in front of the Project, in November 2012, involving a motorcyclist traveling at an estimated 80+ miles per hour:

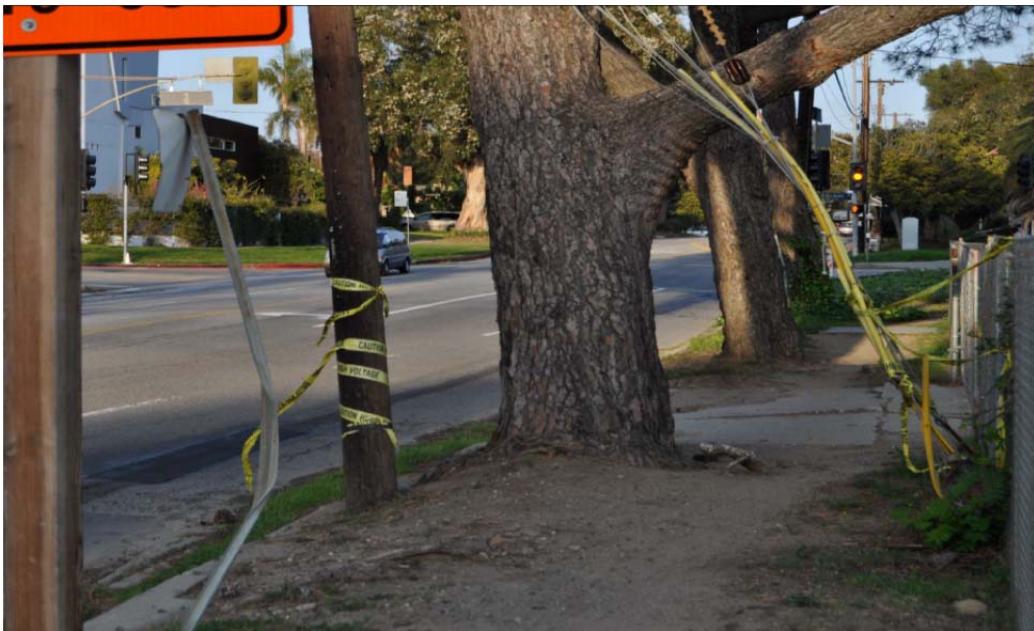
Fatality Spurs Bus Route Study on Sunset Blvd. In Pacific Palisades

By [Reza Gostar](#), Staff Writer

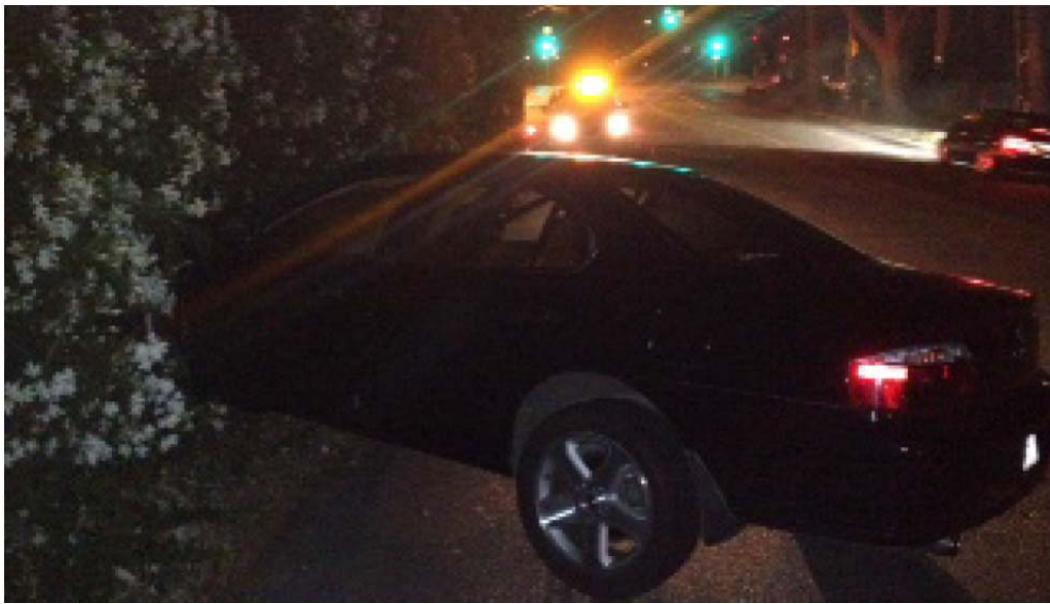
2013-01-31

Spurred by the tragic death of 25-year-old motorcycle rider Patrick O'Dell, the Los Angeles Department of Transportation (LADOT) is evaluating the western intersection of Marquez Avenue and Sunset Boulevard.

The curves immediately west of the site likewise encourage auto and motorcycle enthusiasts to test the limits of their vehicles and skills. Residents of this area have seen many accidents, including cars jumping the curb or rolling over, at or adjacent to the Project site. The site itself bears witness to at least one such incident (the following photograph is taken from the Project's frontage along the eastbound lanes of Sunset, and shows the damage from one recent curb-jumping incident):



Most recently, on June 13, 2013, this part of Sunset was the scene of a late-night solo spinout accident, in which an eastbound vehicle -- traveling uphill on Sunset -- jumped the curb, ricocheted off the guard rail, crossed all four traffic lanes and came to rest in the shoulder of the westbound lanes across from the driveway of the Project site (the traffic signals here are the same ones pictured in the previous photograph):



In view of the already hazardous condition of this intersection and roadway, and the significant increase in risk that both the construction and long-term occupancy of the Project would necessarily present, your office should reconsider and require further study of the traffic aspects of this development. The proposed development at 17030 Sunset and the issues concerning the manner in which public buses are allowed to turn around at the intersection of Sunset and Marquez compound the traffic issues.

III. GEOLOGY AND SOILS (Section VI.), HYDROLOGY (Section IX) and UTILITIES AND SERVICES (Section XVII.c.)

The MND fails to acknowledge and address the critical geologic and hydrologic hazards at the site and the serious stormwater drainage issues created by the Project.

Again, we refer you to and herein incorporate by reference the prior and current comments of ourselves and other interested persons, including the Pacific Palisades Community Council and the expert letters submitted by GeoConcepts, Inc. and Ralph Stone and Company, Inc. **Neither the City nor the applicant has provided a response to ANY of the substantial issues raised in these letters. This is a dereliction of the City's duty to conduct appropriate due diligence in the permit process.**

Much has been said about whether the site was originally a canyon or arroyo. The historic aerial photos of the site, however, show its physical characteristics over the years and end the terminological debate over the nature and size of the now-filled feature. The road visible on the 1924 photo below is Marquez Avenue before the construction of Sunset Boulevard (originally Beverly). The large bowl in which Malibu Village now sits is visible, as well as the steeper canyon/ravine that was partially filled to build Sunset Boulevard:



The aerial photo on the following page shows the property after the construction of Sunset (which was built along the southern side of the horizontal row of trees in the prior photo. Bernheimer Gardens (before the landslide that dramatically affected that property) is visible to the east of the subject site. Marquez Place and the large apartment building to the north of Marquez Place (111 Marquez Place) have yet to be constructed.



Finally, the following aerial photograph was taken in the late 1950s, and shows the site after additional grading was done.



These photographs and the independent expert geology comment letters compel additional study of the geology of the site. Given the steepness of slope of the graded site before additional fill was added, it is critical that much deeper borings be done on the current “flat

pad” near Sunset Boulevard to determine the characteristics of the geology, soils and hydrology to **at least** the full depth of the pile rows which propose to support the Project.

The limited extent of soils and hydrology testing on this complex site is shocking. The deepest boring on the Project site on the “flat pad” near Sunset is only 21 feet deep, while the pile row proposed for the Project in this area is 60 feet deep. This limited testing does not even approach the level of study required for proper due diligence. It exposes the surrounding community to potentially life-threatening conditions. **It also exposes the City to potentially enormous damages in the event of loss of life or property as a result of this failure to exercise its permitting responsibilities with the requisite diligence.**

The Coastal Act requires that “[n]ew development **shall** . . . [m]inimize risk to **life and property** in areas of high geologic . . . hazard” and “[a]ssure stability . . . and **neither create nor contribute significantly to** erosion, **geologic instability**, or destruction of the site or surrounding area . . .” (Coastal Act § 30253(a), (b), emphases added.)

In addition to geological issues, there are substantial hydrological issues. The applicant has provided NO technical analysis of stormwater drainage, and in fact, the report of E.D. Michael assumes that the whatever the Project’s runoff is will drain through what is an abandoned storm drain through Malibu Village that is incapable of carrying water. The MND merely provides that the Project must comply with provisions of LAMC Section 64.70 regarding stormwater runoff, but the applicant has submitted no documentation that provides technical data that support their ability to do so. In addition, the MND does not address mitigation of subsurface drainage patterns as required by MND Sections IX.c. and d.. Obviously, more study of the hydrology of this site is needed.

The applicant’s own geotechnical engineer advised that a hydrogeologic report be prepared to provide estimates for **flow rates** of the groundwater. (Sassan, Addendum No. 2, A1). E.D. Michael did **not** calculate these estimates in his January 13, 2013 report. Without these estimates, we query the ability of Sassan to design adequate retaining walls or pile rows. Even the minor six-foot high retaining wall that Sassan recently designed for the builders of our residence at 17050 Livorno Drive completely failed in one area and had to be rebuilt. The builder told us that this retaining wall failed because the yard had been overwatered, yet again showing the critical role of hydrology.

The MND incorrectly states (Section XVII.c) that the site is presently served by existing stormwater drainage facilities. This is not the case. The site is presently undeveloped and not connected to any stormwater drainage system. Sassan advised the applicant to obtain a drainage easement from Malibu Village, and that if it cannot obtain one, the water would have to be collected and pumped to a proper drainage system (Addendum No. 2, A.1). The closest proper drainage system, however, drains to the City drainage system that also runs along Malibu Village’s eastern property line.

The applicant has acknowledged the presence of water on the site, but has not adequately addressed the amount or the flow of such water. Nor, more importantly, has the applicant analyzed or characterized the site during extended periods of high rainfall. A complete study of the hydrology of the Project site is especially critical since the portion of Sunset

Boulevard that is adjacent to the site is built on fill. If the hydrology of the Project is not adequately studied, the stability of Sunset Boulevard (which is the only way in and out of the Marquez Knolls neighborhood) is placed in jeopardy, with potentially catastrophic losses resulting from its failure.

The need for detailed studies that examine the site's hydrology and geology during periods of heavy rainfall also is emphasized by the fact that, in the absence of such studies, the slope at Cross-Section E-E is calculated to possess only a 1.503 static safety factor (Addendum No. 2, Figure 4-1) and at Cross-Section C-C to possess only a 1.599 static safety factor (Addendum No. 2, A2). These safety factors thus barely exceed the City's minimum static safety factor of 1.5, so there is little margin for error and further study is compelled.

We understand that the applicant has told the residents of Malibu Village that they calculated a value of 3.2 cubic feet/second "peak runoff" and proposed to mitigate it with .225 cubic feet/second of drainage capacity. This is wholly inadequate, especially given the fact that without being able to analyze the supporting calculations, it is unknown whether or not that 3.2 value is based on proposed surface runoff or takes into consideration the subterranean water flow. This is of utmost importance because all surface runoff and subterranean water is proposed to flow into the existing city drain below the open cement drainage ditch on the back hill of Malibu Village below the Project. Whether or not this drainpipe can handle the additional flow is a question that requires further study. If the subsurface flow is not adequately mitigated and the Project site absorbs surface drainage from heavy rains in volumes not calculated, the stability of the soils below the Project will be dramatically affected. These soils constitute the hillside above Malibu Village and the backyard of the Project, which a "soldier wall" has been designed to support, without attempting to assess the load it must bear during a period of heavy rainfall.

The critical need to study the hydrology of the site during periods of heavy rainfall also is described in recent professional publications and set forth in more detail in our prior letter. The amount and flow of water on the Project site must be quantified during and after an extended period of heavy rainfall in order to determine whether or not the proposed site's dewatering system, retaining and soldier walls will be adequate, and to determine whether or not the Monterey formation bedrock that the applicant is relying on as support for this project could be affected by this flow of water. It is common knowledge that the Monterey Formation has failed in many areas adjacent to and below the subject site.

IV. HAZARDS AND HAZARDOUS MATERIALS (Section VIII)

Hydrogen sulfide gas has been found on properties adjacent to the Project site. Further study (*i.e.*, more and deeper borings -- preferably by an engineer other than Sassan given the credibility issues raised by the complaint filed against him by the State of California) is required to determine whether or not hydrogen sulfide gas poses a risk on the Project site. The applicant needs to provide factual evidence regarding the nature and extent of the undocumented fill on the site, the source of the toxic odors reported in drilling reports on the site, and all potential safety issues relating thereto.

V. NOISE (Section XII)

The MND states -- without scientific support -- that the proposed project will have a less than significant impact with respect to whether or not there will be a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. We and our neighbors would like the applicant to provide a noise study that assesses what the additional noise level will be for the single-family homes across Sunset after the proposed project is built.

There is a high volume of motorcycles, buses, cars and trucks driving along this stretch of Sunset. Therefore, we are concerned that since the project does not cascade from Sunset, but instead rises as a uniform wall over 43 feet high along over 75% of the front of the property, the traffic noise that currently is absorbed by the three large Torrey Pine trees and otherwise is allowed to travel across the site will be reflected back toward the single-family homes across Sunset and cause an undue increase in the ambient noise level there. Rough calculations confirm that sound levels could well increase over 5 decibels, which is in excess of that permitted by the Coastal Act. This rough calculation does not include the increase in ambient noise level from the mechanical systems on the roof of the proposed structure, nor that generated by the additional 121 cars entering and leaving the building each day, which also will increase the amount of braking noise generated by existing Sunset traffic. The applicant should provide a suitable study by a qualified acoustician addressing this substantial concern.

VI. BIOLOGICAL RESOURCES (Section IV)

The MND fails to disclose that the site contains three rare mature Torrey Pine trees that are part of a set piece of 16 such trees that rim Sunset Boulevard along this stretch of classified scenic highway. The Project should be designed to save these rare trees and preserve the irreplaceable historic natural beauty they bring to this section of Sunset.

Thank you for your consideration of these comments. We hope that in view of these substantial concerns, your office will reconsider and withdraw the proposed MND. As noted, we doubt that the Project as currently conceived can comply with applicable land use and Coast Act requirements under any circumstances. In all events, it is clear that a Focused EIR must be required before the Project can properly be considered for approval.

Sincerely,



Amy J.R. Lundberg



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