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File 9999.90

September 16, 2013

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-1989-763-CU-PA1; ENV-2009-MND-RECI
Related Case: CPC-2009-837-CU-SPE-DRB-SPP-SPR-DI-ZV; ENV-2009-836-MND

Dear 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 41 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 that 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 opposes the Curtis School's improper attempt to circumvent the mandated administrative and environmental review procedures for the proposed large scale development of its campus in the Mulholland Scenic Parkway (the "Master Plan"). Curtis is doing so by utilizing the truncated Plan Approval process. Instead, Curtis should seek a new conditional use permit as well as follow the required Multiple Approvals procedure for all ancillary approvals that must be obtained to implement its Master Plan. Curtis' proposed Master Plan is a new development plan, substantially different than the plan that was approved in 1980, and requires full administrative and environmental review, including substantive review of its new Master Plan for conformance with the Mulholland Scenic Parkway Specific Plan by the Mulholland Design Review Board. Curtis must therefore file for a new conditional use permit and pursue the statutory Multiple Approvals procedure.

Among the specific approvals Curtis must formally seek are a variance from the Baseline Hillside Ordinance ("BHO") for its proposed deviation from the BHO's grading limitations and exceptions from the Mulholland Specific Plan. Curtis' current application is a transparent attempt to evade the stringent variance and exception requirements that it cannot satisfy. Curtis previously applied for a BHO grading variance and three Specific Plan exceptions. But after it became clear that

Curtis could not satisfy the variance and exception requirements, it withdrew its application and improperly applied for approval under the streamlined Plan Approval procedure, requesting approval of its plans to deviate from the BHO and the Specific Plan without satisfying the strict variance and exception findings. Curtis cannot properly circumvent the stringent procedures for seeking a variance from the BHO and exceptions from the Mulholland Specific Plan. It must refile a proper application seeking all mandated approvals in the manner required by code.

The Hillside Federation strongly opposes Curtis' violation of the procedures designed to assure compliance with code, stringent administrative review and public participation in the process, and protection of the hillside environment. The Federation also objects to the attempt to bypass meaningful environmental review through submission of an MND instead of an EIR for this highly impactful development project in the historic, scenic and environmentally sensitive Mulholland Scenic Parkway.[1]

I. Curtis Improperly Seeks Plan Approval Instead of a New Conditional Use Approval and Multiple Approvals

Curtis improperly seeks a rubber stamp approval of its highly impactful Master Plan through a "Plan Approval" under LAMC 12.24.M. The procedure is improper because Curtis is required to file a full conditional use case for approval of its new Master Plan and it is also required to obtain multiple approvals for (among other things) the Municipal Code variances and Specific Plan exceptions that it seeks as part of its project.

Plan Approval is authorized under LAMC 12.24.M only for sites on which "a deemed-approved conditional use is permitted." Since Curtis's school use of the property was authorized by a 1980 conditional use permit, Curtis's use is not a "deemed-approved conditional use" and, by the plain language of 12.24.M, Curtis cannot therefore seek Plan Approval. For that reason alone, Curtis' Plan Approval must be denied.

But even if the City misapplies 12.24.M by utilizing the Plan Approval process for conditionally-approved uses (not just deemed-approved uses), Plan Approval may only be used for plans that **(1)** do not expand the project site; **(2)** maintain all previously-imposed "conditions of approval;" and **(3)** do not result in a meaningful (non-de minimus) intensification of use. These limitations on the Plan Approval process are stated in ZA Memorandum No. 78, "Clarification of 'Plan Approval' Definition and Filing," September 28, 1989. None of these three separate requirements can be satisfied by Curtis' application.

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[1] All documents related to Curtis that are referenced in this letter were copied from the file in this case that is being maintained by the assigned City Planner, Franklin N. Quon.

A. Curtis' Master Plan Would Expand the Project Site

ZA Memorandum No. 78 makes it clear that Plan Approval cannot be used for plans that would "expand the site." In such cases, "new conditional use applications should be filed." Curtis' proposed Master Plan would expand the site as follows: "The project's major components include: . . . (4) the addition of a secondary limited access road from Mulholland Drive utilizing an existing Caltrans driveway and construction staging area." *Plan Approval Request*, Attachment A, p. 2 (August 12, 2013). This represents an expansion of the project site because the Caltrans Property on which the proposed secondary roadway would lie is not currently controlled by Curtis, used in any way for the school, and is not subject to Curtis' existing CUP. Because the proposed Master Plan would thereby expand the project site, Curtis must file an application for a new conditional use. It cannot proceed by Plan Approval.

B. Curtis' Master Plan Would Change Many Conditions of Its Approval

Plan Approval is also improper under ZA Memorandum No. 78 because the proposed Master Plan would "change an explicit condition or language of the grant of the original authorization." Indeed, Curtis proposes to *eliminate* many of its existing "conditions of approval" and replace them with a new set of conditions. Several conditions that were critical to the original CUP approval and environmental clearance of the 1980 CUP would be eliminated, contradicted or narrowed by the proposed conditions of approval. These changes render the use of Plan Approval improper.

1. The condition limiting Curtis to *68* faculty/staff members would be increased to *118* faculty/staff members—precluding use of the Plan Approval process

The 1980 CUP, Condition No. 2, limited Curtis to 52 faculty and staff members. The Findings supporting the 1980 CUP explain that limiting Curtis to 52 faculty and staff members (in conjunction with the limitation on the number of students to 475) functions as a "limitation on the overall intensity of use of the 27-acre site," which "contributes greatly to the mitigation of the most critical adverse environmental impacts." Feb. 7, *1980 Conditions and Findings*, p. 5 (Findings, No. 2.A, Mitigation Measures—Feasible).

Curtis subsequently applied for a new CUP to increase the authorized number of students from 475 to 675, and to increase the number of faculty and staff from 52 to 68. Significantly, Curtis applied for a new conditional use permit—it did not seek to change these conditions through Plan Approval. The City issued the new CUP in 1990, which incorporated the 1980 conditions and increased the permitted student population to 675 and the faculty and staff limit to 68. *See City Planning Case No. 1989-763-CU.*

While Curtis sought and obtained a new CUP to increase its student and faculty/staff condition in 1990, it is now attempting to use the Plan Approval process in seeking to increase by *50* the allowable number of faculty and staff members. Curtis thereby seeks to change the conditions of

approval to allow *118* faculty and staff members—more than a *73% increase* in the total number of permitted faculty and staff members. As ZA Memorandum No. 78 makes clear, the Plan Approval process cannot be used to do what Curtis seeks, "to change an explicit condition or language of the grant of the original authorization."

2. Curtis seeks to eliminate the critical 1980 condition requiring it to install public trails on Open Space property along Mulholland Drive

One of the most important mitigation measures imposed under the 1980 conditions of approval was the requirement to improve Mulholland Drive by installing public trails on its open space property. Condition 8(a) provides that Curtis shall undertake the "[i]mprovement of Mulholland Drive in conformance with Scenic Parkway standards, including hiking, equestrian, par [jogging/exercise] course and bicycle trails." These trails are depicted on the Site Map, incorporated into the CUP conditions as "Exhibit A-4."

Curtis tried to have the trail-building condition removed before the 1980 CUP was granted. But the City's Bureau of Engineering was steadfast in asserting that the trails were necessary to mitigate the school's impact on the scenic Mulholland Drive area—stating that implementation of the trail program would "reduce the project's adverse impacts to an acceptable level." *Final Supplemental Report*, EIR No. 94-77-CUC, pp, iii, F-1. As the EIR indicated, the trails were essential mitigation measures necessary to avoid or mitigate significant impacts. *See Suppl. Report*, attaching portions of the EIR, pp. 38, 44-46. As a result, Curtis represented in a February 5, 1980 letter to the City Planning Commission that it would install "the trail system scheduled for the Mulholland Scenic Parkway." This was further confirmed by Curtis' legal counsel, McDonald, Halsted & Laybourne, in an April 7, 1980 letter, stating that "the Curtis School is truly committed to the reasonable protection of the corridor; will provide the sculptured green belts and trails . . ." Thus, the final conditions of approval require Curtis to install the four trails. *See also 1980 Site Plan*, titled "Exbihit A-4" (depicting the equestrian, bicycling, par jogging course and hiking trails).

Curtis has yet to build those trails. But the proposed conditions of approval would eliminate the condition requiring Curtis to honor its commitment. That change of condition alone precludes Curtis from utilizing the Plan Approval process.

3. The 1980 CUP condition requiring Curtis to balance all grading on site would be eliminated

The 1980 CUP not only requires Curtis to minimize grading, it also prohibits the import or export of soil: "Total grading requirements have been decreased and grading is entirely within the site, there being no import or export of earth." Feb. 7, *1980 Conditions and Findings*, p. 7 (Findings No. 2, Mitigation Measures—Feasible).

Curtis' proposed conditions, however, have eliminated this prohibition against the import or export of soil. Instead, the proposed conditions would authorize 149,094 cubic yards of new

grading, allowing Curtis to export an anticipated 58,896 cubic yards of earth. *See Plan Approval Request*, p. 10. Because Curtis seeks to eliminate the 1980 CUP's prohibition against the import or export of soil, ZA Memorandum No. 78 makes clear that it cannot proceed by Plan Approval and must instead file for a new conditional use permit.

4. Curtis' proposal would also replace the 1980 condition prohibiting structures within 500 feet of the Mulholland Corridor

Condition No. 7 of the 1980 CUP precludes Curtis from building any structure within 500 feet of the Mulholland Corridor. The prohibition against structures within 500 feet of Mulholland was intended to protect views from Mulholland and the surrounding areas as was the requirement that approximately 80% of the site be landscaped and maintained as open space. The CUP even required Curtis to covenant that it will not erect any buildings on the playing fields or open space areas depicted on the Site Plan, Exhibit A-4. *See Condition No. 21*. Despite that obvious concern for precluding structures within 500 feet of Mulholland—an area devoted exclusively to trails, open space and playing fields—Curtis' proposed conditions would eliminate the prohibition against structures within 500 feet of Mulholland. Moreover, Curtis' proposed gymnasium would be located partially within the 500 foot area and be visible from the public right of way—including from the historic and scenic Mulholland Bridge. The changes cannot be pursued apart from a new conditional use application.

5. Curtis would also modify the 1980 condition prohibiting any structure (other than the gym) exceeding 36 feet in height to allow four such structures

The 1980 conditions provide that no building (except the gym) shall be more than 36 feet in height. The 1980 Findings explain that the limitation on height provided in Condition No. 7 was intended to "mitigate any visual impact from Mulholland Drive." Feb. 7, *1980 Conditions and Findings*, p. 7 (Findings No. 2, Mitigation Measures—Feasible). Curtis' current proposal, however, would allow its Arts and Commons buildings to reach 40 feet in height, in violation of the 1980 condition, re-purpose its existing gym as part of the planned Arts and Theater Complex, and build a new gym—all four exceeding the 1980 CUP's 36-foot height limitation. In fact, the new gym would be partially located within the Inner Corridor of the Mulholland Scenic Parkway, in violation of the Specific Plan's prohibition against structures over 30 feet in height.

6. The hours of operations would be significantly expanded

The 1980 conditions simply provide that the school shall operate from 8:15 a.m. through 3:30 p.m., Monday through Friday. The Master Plan would provide for "office hours" of 7 a.m. to 7 p.m. and "special events" on Monday through Friday until 9 p.m. and on weekends and holidays until 5 p.m. The special events represent a new condition authorizing operations long past those allowed under the 1980 conditions. Given the school's location in a residential zone, this constitutes a significant change of conditions that requires a new conditional use permit, not mere Plan Approval.

7. The 1980 condition prohibiting bleachers would be eliminated

Condition No. 4 in the 1980 CUP states that "[t]here shall be no bleachers next to the playing fields." Indeed, Curtis promised in a February 5, 1980 letter to the Planning Commission that this condition prohibited it from "constructing bleachers for the playing field at any time now or in the future." Again, however, no such condition is provided in the newly proposed Master Plan and the Site Plan submitted for approval depicts bleachers on both fields. This too makes use of the Plan Approval process improper.

C. Curtis' Master Plan Would Intensify Use

The third independent reason that Plan Approval cannot be used to permit Curtis' Master Plan is that it would greatly intensify the use. Plan Approval cannot be utilized to implement changes that would intensify use of the property in comparison to the deemed-approved or previously approved use. This is made clear in ZA Memorandum 78: "As a general rule, expansion of use, intensity, enrollment or size beyond 20%-30% of the size or capacity of the authorized use or facility should be treated as a new conditional use filing." Curtis' Master Plan would greatly intensify its use of the property in a highly sensitive area, making Plan Approval completely inappropriate.

1. The 1980 application was approved after significant mitigation measures were imposed on Curtis to protect the scenic and residential environment

The 1980 CUP was issued after the City had rejected several attempts by Curtis to gain approval of more impactful alternative plans. This history is critical in assessing whether Curtis' new Master Plan is in substantial conformance with the 1980 CUP or an intensification of use that requires a new conditional use approval.

Curtis first applied to relocate its private school to the Mulholland Drive location in 1977. The initial plan was for a 1,000 student K-12 private school. The City determined that an EIR would be required for the proposed conditional use in this environmentally sensitive low density, residentially-zoned and scenic location. The City's Hearing Examiner recommended that the Planning Commission deny the request, which it did. The City Council initially granted the request, after lowering the maximum enrollment to 650 students. But the Mayor vetoed the approval and the City Council sustained that veto in January 1979. *See EIR No. 94-77-CUC, Final Suppl. Report, p. i.*

Curtis' proposed use of the property for a private school was quite controversial, as evidenced by the Mayor's veto. In fact, the Planning Department's Community Planning and Development Department was opposed to Curtis' plan to operate a school at the Mulholland location even after Curtis agreed to lower enrollment to 475 students, emphasizing that the use was not suited to the location:

> "The staff still does not approve of this use at this site. The number of prospective students is not the problem, the Use is! Such a use is in conflict with the adopted Encino-Tarzana District Plan, and the Mulholland Scenic Parkway Ordinance. Further, the granting of this use here would set a precedent that could be used to destroy the Mulholland Scenic Parkway Plan and all other Scenic Corridor Plans. Even with reduced enrollment, the physical plant would require virtually the same grading and the same physical impact on a site aside from its qualities of physical desirability and aesthetics. The staff strongly opposes the proposed use within a District Plan Designation of Minimum Density Residential Use, and on a site within a Scenic Corridor." *Final Suppl. Report*, p. F-2 (emphasis in original).

Similarly, the Bureau of Engineering was concerned about maintaining the open space character of the scenic area and strongly asserted that the adverse environmental impacts of the proposed school could not be mitigated unless Curtis was required to construct the proposed hiking, equestrian, jogging/exercise course, and bicycle trails on its open space property along Mulholland Drive. *Final Suppl. Report*, pp. iii, F-1. Curtis had argued that the reduction in enrollment from 1,000 to 475 students made it economically infeasible for it to install the trails. But, as pointed out by the Citizens Advisory Committee on the Mulholland Scenic Parkway, Curtis' claim that it could not afford to construct the trails was contradicted by its plan to construct "a full-size expensive athletic field" despite its small size. *Final Suppl. Report*, p. F-5.

Curtis' plan to grade 615,000 then lowered to 590,000 cubic yards of earth was even more problematic: "Grading of 590,000 cubic yards will significantly alter natural topography." *Final Suppl. Report*, p. ii, F-4, F-6. As stated by the City Planning Commission in its disapproval, "the intensity of the proposed project, 615,000 cubic yards of grading, increased traffic, and the changing of the character of the Scenic Corridor are all in direct conflict with the provisions of the Mulholland Scenic Parkway Ordinance, No. 146,585." *Final Suppl. Report*, p. F-6. Vehement opposition to Curtis' plan to grade 590,000 cubic yards finally forced it to lower the amount of grading to 500,000 cubic yards in its third application for a conditional use permit. *Memo from Los Angeles City Planning Dept., Env. Rev. Unit*, dated Jan. 3, 1980, p.1. The significance of this reduction in grading was emphasized by Curtis itself in a February 5, 1980 letter to the Planning Commission, where the grading reductions were touted as significant refinements supporting approval of its third application.

In granting the 1980 CUP, the City limited Curtis to 500,000 cubic yards of grading, a figure that was found to be the *minimum* quantity of grading necessary to achieve the approved Site Plan. This is made clear in the approval findings, which states that the plan "provides for minimum grading" and emphasizes that the "applicant is required to minimize: (1) the overall amount of grading required" to implement the approved project. Feb. 7, *1980 Conditions and Findings*, pp. 5, 6 (Findings No. 2, Mitigation Measures—Feasible). As stated in those findings, this limitation on grading was in keeping with the Mulholland Scenic Parkway Ordinance, which "required '...grading to be kept at an absolute minimum' in the Scenic Corridor." *Id.*, p. 6. This requirement to keep grading to a bare minimum is cited as a feasible mitigation measure in the findings. *Id.*, p. 7.

2. The proposed Master Plan would dramatically intensify use

Curtis' proposed Master Plan would significantly intensify the use of Curtis' property in ways not envisioned under the 1980 CUP. That intensification requires that Curtis seek a new conditional use permit—not proceed with a Plan Approval under its old CUP.

First, the newly proposed conditions would eliminate Curtis' obligation to build the four public trails that were required under the 1980 CUP to mitigate the school's otherwise significant impact on the environment. Moreover, the proposed Site Plan would make it impossible to install the public trails because Curtis proposes to cut into the base of the Prominent Ridge near Mulholland Drive to situate a 200+ car parking lot that would make inaccessible the open space area through which the trails would traverse. *Compare Entitlements Package* (August 13, 2013), p. 009 (depicting proposed parking lot) with *1980 CUP, Exhibit A-4* (depicting trails along open space area where parking area will be situated). That alone would represent a significant intensification.

Second, the proposed "secondary access road" calls for the erection of *18 retaining walls* on Curtis' and Caltrans' property. *See* Entitlements Package, Curtis School Secondary Access Road Exhibit (April 2, 2013). The 18 retaining walls, including six needed for the secondary access road on Curtis' property and 12 on Caltrans property, will be carved into the once natural hillsides and be visible from the Mulholland Bridge, the 405 freeway and residential areas above the school. This massing of concrete retaining walls along the proposed secondary roadway is precisely the type of unnatural aesthetic impact on the scenic environment that the 1980 decision-makers were careful to protect against. This is the type of urbanizing intensification of the Mulholland Scenic Parkway and environs that precludes utilization of a mere Plan Approval.

Third, the Master Plan calls for the construction of a multi-structure Arts and Theater Complex that was not part of the 1980 Site Plan. The Arts and Theater Complex includes an arts building, a theater, a gallery and an outdoor amphitheater seating 150 to 300 people. The Arts and Theater Complex is complemented by proposed conditions that would allow "Special Events" Monday through Friday until 9 p.m. and until 5 p.m. on weekends and holidays. Curtis anticipates overflow crowds, necessitating the use of off-site parking and shuttling to and from the school, which the newly proposed Master Plan would permit. Add to that the proposed reconfigured outdoor athletic fields (with the bleachers that have been banned under the 1980 conditions) and Curtis will have the infrastructure to draw patrons and fans on a nightly basis to this low-density, single family residentially-zoned neighborhood. Moreover, the outdoor amphitheater (carved into the hillside) and the athletic fields with bleachers will provide the type of noise and light intrusion and increased traffic that the 1980 conditions were designed to prevent. These are significant intensifications, rendering absurd the notion that Plan Approval is somehow appropriate.

Fourth, the Master Plan would allow over-in-height structures and a large 200-plus vehicle outdoor parking lot within 500 feet of the Mulholland Corridor and visible or audible from Mulholland Drive, the 405 freeway, and residential areas above the school. This contravenes the 1980 conditions and Site Plan, which were designed to minimize visual and auditory intrusion by

placing open space and athletic fields closest to Mulholland Drive and limiting structures to 36 feet in height, except for the gym, which is more than 500 feet away from Mulholland under the 1980 Site Plan but within the 500 foot line under the newly proposed Master Plan. These are clearly intensifications that preclude Plan Approval.

3. The plan to grade 149,000 cubic yards, including the export of 58,896 cubic yards of earth, is a major intensification of use

The significance of Curtis' grading plan must be measured in light of the 1980 conditions on grading. Grading was one of the most sensitive impacts considered in 1980. Indeed, the 1980 CUP application was not granted until Curtis finally agreed to reduce its grading from 590,000 to 500,000 cubic yards. That 90,000 cubic yard reduction was indisputably significant. Indeed, Curtis itself acknowledged the significance of this reduction in its February 5, 1980 letter to the Planning Commission.

Curtis now seeks permission to grade almost 149,094 cubic yards of earth, which, when added to the 466,826 cubic yards actually graded, amounts to a total of 615,920 cubic yards of grading. Curtis characterizes the request to grade 115,920 more cubic yards than authorized under the 1980 grant as "only" 23% more than the total originally granted in 1980. What Curtis fails to acknowledge is that this 115,920 cubic yards figure is far greater than the 90,000 cubic yard reduction that finally gained Curtis its 1980 approval. This history makes clear that the addition of 115,920 cubic yards represents a significant intensification. This grading is even more significant because Curtis now plans to export more than 58,896 cubic yards of soil, which is 58,896 cubic yards more than was permitted under the 1980 CUP. Thus, the grading sought under the Master Plan represents an excessive intensification of use that precludes Plan Approval.

II. Curtis Has Improperly Failed To Seek (1) A Variance From The Baseline Hillside Ordinance And (2) Exceptions From The Mulholland Specific Plan

A. The BHO's Grading Limits Cannot Be Exceeded Without A Variance

Curtis is improperly seeking authorization to grade in excess of the limits set forth in the Baseline Hillside Ordinance ("BHO") without seeking a variance.

Curtis is seeking a permit authorizing it to grade 149,094 cubic yards of soil, which is more than 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. *LAMC 12.21.C.10(f)(1)*. Those statutory limitations cannot be exceeded unless a variance from code is granted. Section 562 of the City Charter, however, precludes issuance of a variance absent satisfaction of all the mandated variance findings. *Stolman v. City of Los Angeles*, 114 Cal.App.4th 916, 924 (2003). For the reasons explained in letters submitted in the related case, Curtis lacks evidence sufficient to satisfy the mandated findings and, as a result, a variance cannot be granted. *See* letters from Thomas R. Freeman to Pres. William Roschen, Planning Commission, Related Case No. CPC-

2009-837-CU-SPE-DRB-SPP-SPR-DI-ZV, dated February 13, 2013 and April 15, 2013 and letter from John P. Given in the same case, dated November 26, 2012.

Because Curtis cannot satisfy the variance requirements, it now seeks to avoid them. Curtis has applied for a conditional use plan approval to permit the grading of 149,094 cubic yards "in lieu of the maximum 1,600 cubic yards allowed" under the BHO. *Plan Approval Request, Attachment A*, p. 13. Curtis cites LAMC 12.24.F as authority for seeking a plan approval for grading in excess of the BHO limits without a variance. *Id.* LAMC 12.24.F authorizes the decision-maker to impose conditions "related to the interests addressed in the findings set forth in Subsection E"[2] and, in doing so, "[t]he decision may state that the height and area regulations required by other provisions of this Chapter shall not apply to the conditional use approved." As the history of this project makes clear, the Section E "findings of approval" to exceed height and area limitations cannot be made in this case.

Presumably, Curtis' position is that a variance is not required because the decision-maker has discretion under this provision "not to apply" the height and area regulations "required by other provisions of this Chapter," including the BHO's height and area regulations. The BHO, however, is not subject to LAMC 12.24.F. The BHO expressly provides that its development standards and grading limitations trump any other Zoning Code provisions that would otherwise be applicable:

> "**Single-Family Zone Hillside Area Development Standards**. *Notwithstanding any other provisions of this Code to the contrary*, for any Lot zoned R1, RS, RE, or RA and designated Hillside Area on the Department of City Planning Hillside Area Map, no Building or Structure nor enlargement of any Building or Structure shall be erected or maintained unless the following development standards are provided and maintained in connection with the Building, Structure or enlargement: ...
>
> (f) **Grading**. *Notwithstanding any other provisions of this Code*, total Grading (Cut and Fill) on a Lot shall be limited as outlined below." LAMC 12.21.C.10(f) (emphasis added).

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[2] Subsection E, titled "Findings for Approval," provides as follows: "A decision-maker shall not grant a conditional use or other approval specified in Subsections U., V., W., or X. of this Section without finding: 1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region; 2. that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and 3. that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan. The decision-maker shall also make any additional findings required by Subsections U., V., W. and X., and shall determine that the project satisfies all applicable requirements in those subsections."

The phrase "Notwithstanding any other provisions of this Code" means that the development and grading limitations set forth in the BHO supersede any other Zoning Code provisions that might otherwise regulate grading—including LAMC 12.24.F.

The significance of the "Notwithstanding" provision is unambiguous, as the U.S. Supreme Court has explained:

> "As we have noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section. *See Shomberg v. United States*, 348 U.S. 540, 547-48 (1955). Likewise, the Courts of Appeals generally have 'interpreted similar 'notwithstanding' language ... to supersede all other laws, stating that 'a clearer statement is difficult to imagine.'" *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 17-19 (1993) (*quoting Liberty Maritime Corp. v. United States*, 928 F.2d 413, 416 (D.C. Cir. 1991).

The Notwithstanding language in the BHO, both in its general provision concerning hillside development standards and the specific provision concerning hillside grading, make clear that the BHO regulations supersede any other Zoning Code provisions that would otherwise regulate zoning.

B. Specific Plan Requirements Cannot Be Averted Without An Exception

Curtis is also improperly seeking authorization under LAMC 12.24.F to exceed Specific Plan limits without a Specific Plan exception. But Specific Plan requirements are binding absent the granting of a Specific Plan exception. Specific Plan exceptions, however, require the same findings as a variance and are subject to the same level of rigorous judicial review. *Committee to Save Hollywood Specific Plan v. City of Los Angeles*, 161 Cal.App.4th 1168, 1183-84 (2008). Because of that, Curtis cannot meet the requirements for obtaining the required Specific Plan exceptions.

Curtis again relies on LAMC 12.24.F as the basis for not seeking the required Specific Plan exceptions. But 12.24.F states only that other provisions "of this Chapter" imposing height and area regulations "shall not apply to the conditional use approved." Specific Plans, however, are not provisions "of this Chapter" because they are not part of the Zoning Code, which is the applicable Chapter. Specific Plans are part of the General Plan and therefore not subject to or otherwise rendered inapplicable by LAMC 12.24.E. Thus, Curtis must apply for Specific Plan exceptions if it wants to avoid any Specific Plan requirements.

CONCLUSION

Curtis' application must be denied because Plan Approval is not the proper procedure for seeking approval of its new Master Plan. Curtis must also invoke the Multiple Approvals procedure for seeking the requisite variances, exceptions and other approvals required for various elements of its Master Plan. In doing so, however, Curtis must also begin preparation of a new Environmental Impact Report because, as indicated above and in letters submitted in the related case, approval of its Master Plan would have potentially significant environmental impacts that must be analyzed and mitigated.

Very truly yours,

Thomas R. Freeman

cc: Councilmember Paul Koretz
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TRF:slp