

February 13, 2018

VIA U.S. MAIL AND HAND DELIVERY

Vincent Bertoni
Director of Planning
Los Angeles Planning Department
200 N. Spring St.
Los Angeles, CA 90012

Re: Appeal of LADBS Report No. DBS-170175-DCP (901 Strada Vecchia Road/Mohamed Hadid Property)

Dear Mr. Bertoni:

This firm represents Joseph Horacek, Beatriz Horacek, John Bedrosian and Judith Bedrosian (together, the “Appellants”), owners and residents of the properties at 10510 and 10550 Rocca Place, who, along with other members of the Bel-Air community, have been plagued for years by Mr. Mohamed Hadid’s illegal project (“Project”) at 901 Strada Vecchia Road (“Site”). The present appeal is filed pursuant to Los Angeles Municipal Code (“LAMC” or “Code”) Section 12.26-K and responds to LADBS Report No. DBS-170175-DCP (the “LADBS Appeal Report,” attached hereto as “Attachment 1”).¹ The Appellants have filed this appeal in connection with LADBS’ improper approval of an “erosion control plan” that is nothing more than an illegal scheme aimed at disguising significant amounts of grading that require discretionary entitlements and California Environmental Quality Act (“CEQA”) review for the entire Project.

Let us be clear at the outset: this appeal is *not* about erosion control. Mr. Hadid has now pled no contest to criminal misdemeanor charges in connection with the deception and illegal construction that has taken place in connection with the Project. The audacity behind this Project has earned it top fold front-page coverage in *The New York Times*. Mr. Hadid violated the law and obtained multiple Orders to Comply along the way, with each violation being part of a scheme to enable a grossly illegal Project under the maxim that in Los Angeles one can violate the law first and then obtain forgiveness later. The subject erosion control plan is more of the same, and the notion that this Project may somehow be retroactively brought into compliance

¹ LAMC Section 12.26-K provides that the Director of Planning shall have the power and duty to investigate and make a decision where it is alleged there is error or abuse of discretion in “any order, interpretation, requirement, determination, or action” made by LADBS.

Vincent Bertoni
February 13, 2018
Page 2

through by-right permits – without a single discretionary entitlement or discretionary review – is a charade that needs to end now once and for all. It is incumbent on the City’s Zoning Administrator to make clear that discretionary entitlements and CEQA review are required for any work on the Project to continue. And if Mr. Hadid is unwilling to file for, and obtain, such entitlements, then he can demolish the illegal Project and restore the Site to its natural condition.

I. LADBS’ APPROVAL OF AN EROSION CONTROL PLAN CONTINUES A PATTERN OF LOOKING THE OTHER WAY WHEN MR. HADID VIOLATES THE LAW.

The present erosion control plan, which, when properly calculated, allowed 2,283.5² cubic yards of grading, brings the total amount of grading at the Site to-date (based on Mr. Hadid’s plans) to approximately 14,199.69 cubic yards – all without a single valid grading permit having been issued for the Site. This does not include approximately 2,700 cubic yards of soil essentially stolen from a neighbor and pushed across property lines illegally. Accordingly, *approximately 17,000 cubic yards of grading has now taken place at the Site without the issuance of a single valid grading permit or required discretionary approval.* Given that a maximum of 6,000 cubic yards³ of grading are allowed without discretionary entitlements, not an ounce of additional grading should have been allowed at the Site without, at minimum, a Zoning Administrator’s Adjustment pursuant to LAMC Section 12.24-X.26. Simply put, LADBS erred in allowing Mr. Hadid to subsume grading under an erosion control plan to somehow evade discretionary review.

Our clients’ prior appeal in 2014 proved that Mr. Hadid repeatedly deceived LADBS to arrive at the hulking, illegal building that now looms over Bel-Air. (See “[Attachment 2](#)”). It is extremely confounding that history is repeating itself, forcing our clients to file yet another appeal. As with all his actions to date, Mr. Hadid’s erosion control plan is an act of continued deception, so it is disappointing, to say the least, that LADBS appears to be trying to help “fix” Mr. Hadid’s “mess” by allowing him to cut corners that any developer who did follow the law from the get-go would never be allowed to get away with.

² As explained in greater detail in Section II.A.1 of this letter, we dispute LADBS’ grading calculations in the erosion control plan. The plan mistakenly calculates the total grading as total cut minus total fill, when the appropriate calculation is total cut plus total fill. Throughout this letter, all references are to grading quantities as properly calculated.

³ The erosion control plan indicates the maximum grading permitted is 6,648.34 cubic yards (accounting for exemptions laid out in Section 12.21-C.10(f)(3)). However, as explained in greater detail in Section II.C of our initial appeal, the actual maximum grading permitted at the Site is in fact 6,000 cubic yards pursuant to LAMC Section 13.20-D(1). See “[Attachment 3](#).”

Vincent Bertoni
February 13, 2018
Page 3

In the LADBS Appeal Report, LADBS fails to acknowledge that the so-called erosion control plan allows significant amounts of grading. It does not explain why LADBS previously told Appellants that a grading permit would be required for the erosion control plan, and instead the LADBS Appeal Report now appears to deny that *any* grading was enabled under it. The LADBS Appeal Report states:

Appellant mistakenly suggests that “remedial grading” is taking place at the site. As part of the erosion control measures, LADBS has allowed partial removal of the illegal loose dirt that was placed on the slope at the West portion of the lot and the temporary location of the loose dirt within the building. The removal of the loose dirt was recommended by the Geotechnical Engineer of the project The subject work does not require a grading permit.

Putting aside the fact that our contemporaneous notes of conversations with LADBS reflect LADBS using the term “remedial grading” prior to approval of the erosion control plan, too many uncomfortable facts remain: (1) the erosion control plan documents are all titled: “Temp. **Grading & Drainage Plan**”; (2) on page 2 of the “Temp. **Grading & Drainage Plan**” the Applicant concedes that a permit should be required for this work in a section entitled “Earthwork Table per this Plan and **Permit**”; and the plans are replete with references to “**cut**,” “**fill**,” and **changes in grade** – all of which undeniably point to grading.⁴ Whether a grading permit was issued or not, the new grading requires discretionary review, and through this appeal, we respectfully request that the City’s Zoning Administrator determine that the grading under the erosion control plan, and no new work of any kind, may proceed without discretionary review.

The Appellants’ claims on appeal are set forth extensively in the Appellants’ initial submission to LADBS, which is also attached hereto as “Attachment 3.” Rather than repeating all of those claims, which are incorporated by reference into the present action, we instead respond to the statements provided in LADBS’ Appeal Report. It is telling that the LADBS Appeal Report never provides a single grading figure despite our detailed 26-page appeal to LADBS with comprehensive analysis of total grading. The ongoing obfuscation makes it abundantly clear why transparency is necessary here, and why it is critical that the Project be subjected to environmental review and analysis in connection with the required discretionary entitlements.

⁴ Photographic evidence at the Site also conclusively demonstrates the substantial amount of grading activity being conducted under the approved erosion control plan. See “Attachment 6.”

Vincent Bertoni
February 13, 2018
Page 4

II. LADBS' APPROVAL OF AN EROSION CONTROL PLAN IS AN ERROR AND ABUSE OF DISCRETION.

In the LADBS Appeal Report, LADBS contends that the approved erosion control plan is “for the protection of the neighbors, the slope, and the property itself.” (See “Attachment 1” at page 3). While the Project does pose an imminent public safety risk, those problems are much deeper than those covered by the erosion control plan and such a plan should most certainly not be subterfuge to enable an illegal Project.

A. The Erosion Control Plan Is a Grading Permit in Disguise.

1. The Erosion Control Plan Attempts to Mask Actual Grading Quantities.

The erosion control plan mistakenly concludes that 2,159.92 cubic yards of further grading is authorized because it calculates grading quantities as either total cut minus total fill or total fill minus total cut. This is not the calculation the Code requires. LAMC Section 12.21-C.10(f) refers to “total Grading (Cut and Fill)” and Section 12.21-C.10(f)(1) explicitly provides “the cumulative quantity of Grading, or the total combined value of both Cut and Fill or incremental Cut and Fill” is the proper way to calculate maximum grading quantities. Yet throughout the erosion control plan, cumulative grading quantities are inexplicably calculated improperly. The plan mistakenly calculates the total grading as the total cut *minus* the total fill or the total fill *minus* the total cut, when the LAMC makes clear that the total grading quantity should be calculated as the total cut *plus* total fill.

When calculated properly, the erosion control plan allows for 2,283.5 cubic yards of new grading. Taken further, based on the data provided in the approved erosion control plan, *the total cumulative quantity of grading at the Site is already approximately 17,000 cubic yards*, well over the 6,000 cubic yards permitted under LAMC Section 13.20-D(1) and *nearly four times* the by-right grading maximum referenced in Table 12.21-C.10-6.

Prior to approval of the erosion control plan, *nearly 15,000 cubic yards of grading had already occurred without the issuance of a single valid grading permit*. While the LADBS Appeal Report attempts to characterize this appeal as premature, LADBS has, in fact, approved significant grading at the Site without the required entitlements and environmental review. LADBS should never have allowed further grading at the Site, as the amount of grading exceeds by-right maximums and cannot be allowed to proceed without the legally required public process.

Vincent Bertoni
February 13, 2018
Page 5

2. The Circumstances and Timing of the Erosion Control Plan are Highly Suspect.

In the LADBS Appeal Report, LADBS cites a prior Order to Comply as evidence of prior erosion control efforts and, implicitly, the legality of the erosion control plan that is the subject of the present appeal. But the prior Order to Comply, which our clients did not appeal, bears no relation to the current erosion control plan. In the prior December 31, 2014 Order to Comply, LADBS mandated the installation of temporary erosion control devices (which included sandbags and tarps), a requirement consistent with the LAMC. No grading was allowed as part of that plan. The December 31, 2014 Order to Comply also had a mandatory compliance date of January 5, 2015, speaking to the immediacy of the need.⁵

Further, LADBS did not mandate submission of erosion control plans, nor approve any erosion control plans, during the rainy seasons of 2015 and 2016, the latter of which was the wettest in years.⁶ If the *thousands of cubic yards* of grading approved under the current erosion control plan are necessary for public safety in a rainy season where Los Angeles has received less than an inch of rain, why was the grading not required in 2014, or 2015, or 2016? Given the constant stream of code enforcement complaints, Orders to Comply, and even criminal prosecution of Mr. Hadid, it is unfathomable that LADBS has only recently become aware of the public safety risk posed by the Project.

The LADBS Appeal Report further contends that “[b]etween 2014 and 2017, the project was on hold,” notwithstanding that LADBS had received multiple complaints concerning illegal work being performed at the Site during that period, and the substantial *photographic evidence* of changes to the Project between the revocation of all permits in September 2014 and the issuance of the most recent Order to Comply on September 25, 2017 (See “Attachment 4”).

During this time, additional work on a completely illegal IMAX theater hidden behind a false wall continued. It is this area in which much of the soil from the erosion control plan has been stored, which is especially troubling given that the Board of Building and Safety Commissioners (“BBSC”) mandated *over two years ago* that all unauthorized construction at the Site be immediately demolished and removed, and that the Site be fully restored to its approved

⁵ The 2014 Order does raise the question of why, if the current erosion control plan is necessary as a matter public safety, the September 25, 2017 Order to Comply contains no compliance date.

⁶ Los Angeles received a total of *19 inches* of rainfall between July 1, 2016 and June 30, 2017, compared to 9.5 inches in 2015-2016, and 8.5 inches in 2014-2015. See *Los Angeles Almanac*, available at <http://www.laalmanac.com/weather/we13.php>. By comparison, Los Angeles has received a total of *0.12* inches of rain so far in the winter of 2017-2018, roughly 4 inches below average. *Id.* The less than 1 inch of rainfall so far this rainy season is vanishingly unlikely to create erosion control issues that were not caused by the 19 inches of rainfall last rainy season.

Vincent Bertoni
February 13, 2018
Page 6

state. On June 2, 2015, the BBSC denied Mr. Hadid's appeal for an extension of time and required the immediate demolition and removal of all unauthorized construction. LADBS' failure to enforce the Orders, and now its willingness to allow prior illegal construction to be used to store soil, and in the permitting of a future development, not only rewards Mr. Hadid for his repeated violations of the Code, it also incentivizes others to simply ignore the Code during construction, knowing that if illegal conduct is eventually detected, LADBS will just allow them to retroactively legalize projects after completion, ignoring prior violations along the way, including the actual orders of the BBSC.

Viewed another way, the situation becomes clear. Mr. Hadid submitted no applications for grading permits in 2015 or 2016. No erosion control plans were mandated in 2015 or 2016. Mr. Hadid submitted *four* grading permit applications in 2017. (See "Attachment 5"). Months later, without the issuance of any grading permits, an erosion control plan that allows extensive grading is mysteriously approved by LADBS. It is highly troubling that after Mr. Hadid requested permission to continue his massive grading project, LADBS suddenly decided to allow enormous quantities of grading at the Site for "erosion control," all in the name of public safety.

Something is rotten in the State of Denmark.

III. LADBS IS ERRONEOUSLY ALLOWING GRADING IN EXCESS OF BY-RIGHT MAXIMUMS THROUGH THE EROSION CONTROL PLAN.

The LADBS Appeal Report asserts that the Appellants' challenges to the grading allowed under the erosion control plan are premature because LADBS has not issued any new grading permit requiring discretionary review. Yet this gets at the very heart of the appeal – LADBS is circumventing the Code permitting requirements in order to grant Mr. Hadid permission to perform a substantial amount of grading without CEQA review. By the time any grading permit is issued here, if LADBS even requires such a permit following the significant grading being conducted under the erosion control plan, the substantial, adverse environmental impacts will have already occurred. The environmental impacts of such grading must be fully evaluated *before* it is performed.

To accept LADBS' position, the Planning Department would have to agree that the Code allows for infinite amounts of grading at a project site *only so long as no grading permit is issued*. This is an absurd and counter-intuitive reading of the Code. It is also antithetical to the planning and entitlement process, which values transparency, public input, and full environmental review of projects requiring discretionary approval.

LADBS is correct that no new grading permit has been issued here. This is precisely the issue. If this appeal is deemed "premature," *approximately 17,000 cubic yards of grading will*

Vincent Bertoni
February 13, 2018
Page 7

be allowed at the Site without the issuance of a single valid grading permit or required discretionary approval. The approved erosion control plan cannot be allowed to serve as a grading permit under another name, or the function of the LAMC's permitting and entitlement process will be undermined.

IV. LADBS' REVIEW OF THE PROJECT IS DISCRETIONARY.

LADBS' oversight of the Project has undoubtedly exceeded the bounds of ministerial review. As set forth above, discretionary entitlements are obviously required for the grading alone, yet LADBS is allowing additional grading under the guise of erosion control. As both a practical and legal matter, the Project has already involved the exercise of substantial LADBS staff discretion by LADBS staff, and it is time for this matter to be transferred to the Planning Department. The distinction between ministerial and discretionary actions, and the substantial evidence that this Project requires the exercise of discretion by LADBS staff, is discussed extensively in the Appellants' initial submission to LADBS, which is incorporated herein. (See "Attachment 3").

Apart from all the required entitlements, it is unquestionable that LADBS will continue to exercise significant discretion in determining how Mr. Hadid will remedy the Site's problems, including, but not limited to, the following:

- Determining whether to enforce LADBS' own Orders to Comply by mandating the demolition and removal of unpermitted construction at the Site. (As stated previously, new staff has instead decided to ignore the Board of Building and Safety Commissioners' ruling on this issue and is allowing the storage of "loose dirt" inside unpermitted construction instead.)
- Assisting Mr. Hadid and his development team with their significant alterations of the Project plans – all in an attempt to legalize a fundamentally illegal structure.
- Determining whether to exclude previously performed hauling and initial hauling in deciding when to mandate a haul route.

Simply stated, LADBS' actions here have crossed the line from ministerial to discretionary. LADBS has no legal authority to grant these permits in a ministerial fashion.

V. APPROVAL OF THE EROSION CONTROL PLAN IS "PIECEMEALING" IN VIOLATION OF CEQA.

CEQA prohibits "piecemeal" review of a project in order to minimize or avoid environmental review. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Com'rs* (2001))

Vincent Bertoni
February 13, 2018
Page 8

91 Cal.App.4th 1344, 1358).⁷ LADBS' approval of the erosion control plan without discretionary approval or environmental review is, in itself, piecemealing of the Project in violation of CEQA. The previous illegal grading, the grading being permitted under the erosion control plan, the pending export of less than 1,000 cubic yards of soil (in order to avoid a haul route approval), and the subsequent export of significantly more soil ***are all elements of the same Project***, and must be evaluated together under CEQA. LADBS cannot allow Mr. Hadid to avoid required discretionary approvals and CEQA compliance by dividing the Project into multiple segments over time, yet ***this is exactly what is happening here***.

CEQA requires environmental review to evaluate and mitigate potential adverse impacts, and that review cannot be delayed or avoided altogether while other environmental impacts are allowed to occur without any disclosure or mitigation. The failure to require such analysis is an error and abuse of LADBS' discretion.

VI. CONCLUSION.

The approved erosion control plan is nothing more than an effort by Mr. Hadid to avoid mandatory approval processes that require CEQA review. By approving Mr. Hadid's erosion control plan, LADBS has essentially issued a grading permit by other means, and has done so in a manner expressly intended to avoid the Code's requirements of transparency and public input.

LADBS' approval of the erosion control plan is an error and abuse of discretion. The erosion control plan must be immediately rescinded, and the Project must undergo a fully transparent CEQA review. Mr. Hadid's prior bad acts cannot be used to justify his evasion of requirements for discretionary approvals and CEQA review. Instead, he must obtain discretionary entitlements where the LAMC requires them, just like any other applicant.

Thank you for your time and attention to this matter.

Very truly yours,



Victor De la Cruz
C.J. Laffer
Manatt, Phelps & Phillips, LLP

⁷ The legal standard for determining improper project piecemealing is discussed extensively in the Appellants' initial submission to LADBS. (See "[Attachment 3](#)")

Vincent Bertoni
February 13, 2018
Page 9

cc: Councilman Paul Koretz, Council District 5
Mr. Frank Bush, General Manager, Los Angeles Department of Building and Safety
Mike Feuer, Esq., Office of the City Attorney, Los Angeles City Attorney
Leela Kapur, Esq., Office of the City Attorney, Chief of Staff
Will Rivera, Esq., Deputy Chief, Special Litigation Division
Terry Kaufmann-Macias, Esq., Office of the City Attorney, Supervising Attorney, Land Use Division
Don Cocek, Esq., Office of the City Attorney, Supervising Attorney, Code Enforcement
Ms. Joan Pelico, Office of Councilman Paul Koretz, Chief of Staff
Mr. Charlie Rausch Jr., Zoning Administration Division, Chief Zoning Administrator
Mr. Pascal Challita, Department of Building and Safety, Chief – Inspection Bureau
Ms. Ifa Kashefi, Department of Building and Safety, Chief – Permit and Engineering Bureau
Mr. Shahen Akelyan, Department of Building and Safety, Assistant Bureau Chief – Permit and Engineering Bureau
Mr. Luke Zamperini, Department of Building and Safety, Residential Inspection – Chief Inspector
Mr. Faisal Alserri, Council District 5, Planning Director
Mr. Fred Rosen, Bel-Air Homeowners Alliance, President and CEO
Mr. Shawn Bayliss, Bel-Air Association, Executive Director
Mr. Dan Love, Bel-Air Association, President
Mr. Joseph Horacek, Esq.
Ms. Beatriz Horacek
Mr. John Bedrosian
Ms. Judith Bedrosian
Thomas O'Brien, Esq., Paul Hastings, LLP
Adam Reich, Esq., Paul Hastings, LLP
Jordan Ferguson, Esq., Manatt Phelps & Phillips, LLP