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March 24, 2014

City Planning Commission
City of Los Angeles
City Hall, Room 272
200 North Spring Street
Los Angeles, CA 90012

Re: **Curtis School Expansion**
Hillside Federation Response to Planning Staff Report
15871 & 15801 W. Mulholland Drive; ENV-2009-836-MND-REC-1
CPC-2014-102-CU-SPR-DD-SPE-DRB-SPP-MSP

Dear Commissioners:

This firm represents the Federation of Hillside and Canyon Associations, Inc. ("Hillside Federation") in opposing the Curtis School development project.[1]

The Hillside Federation has expressed its opposition to the Curtis project and the associated environmental review in a series of letters to the Planning Commission over the past two years. This letter focuses on the Department of City Planning Recommendation Report in advance of the March 27, 2014, Planning Commission hearing (the "Staff Report"). The Staff Report correctly recommends that the Commission not approve the proposed off-site secondary access road on Caltrans property and associated on-site improvements. But the Staff Report errs by recommending adoption of the proposed mitigated negative declaration, conditional use permit, specific plan exception, specific plan project permit compliance, site plan review, and the other requested entitlements.

The Staff recommendation to grant a conditional use permit allowing Curtis to grade in excess of limitations imposed under the Baseline Hillside Ordinance ("BHO") is legally improper because the BHO regulations supersede grading authority under any other provision of the Zoning Code. This Commission cannot therefore bypass the BHO's carefully crafted grading limits by invoking its general authority to issue conditional use permits. The BHO's exclusivity is essential to maintaining the integrity of grading and export regulations designed specifically to protect hillside areas and carving a

[1] The Hillside Federation was founded in 1952 and represents 44 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 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.

hole wide enough to allow conditional uses to exceed those limits would damage the hillsides that the BHO was intended to protect.

The request to grant an exception to the Mulholland Specific Plan to permit an over-in-height gymnasium must be denied because Curtis cannot show legally-cognizable hardship—an essential element for granting an exception.

Finally, the proposed conditional use permit must be denied because several proposed conditions would modify or delete mitigating conditions imposed on Curtis through the 1980 environmental review process, which cannot be modified apart from an environmental impact report. Because that mandated process has not been invoked, the proposed conditions are legally invalid, precluding issuance of the proposed conditional use permit.

I. Baseline Hillside Ordinance Grading Limits Cannot Be Exceeded By Invoking LAMC Section 12.24.F Conditional Use Authority

The BHO regulates grading on all properties within residentially-zoned hillside areas, whether those properties are used for single-family residences, multi-family dwellings, commercial establishments or schools. *See* T. Freeman, letter to W. Roschen (Planning Comm.), Sect. A.1, pp. 2-3 (April 15, 2013) ("4-15-13 Letter"). Indeed, Planning Staff has expressly confirmed that BHO grading limitations apply to *all* properties within residentially-zoned hillside areas, regardless of use. *See* T. Freeman, letter to City Planning Comm., Sect. II.B.2, pp. 23-24 (Dec. 18, 2013) ("12-18-13 Letter") (*quoting* Planning Staff Report). Planning Staff, however, is improperly recommending that the Commission approve grading in excess of BHO limits without requiring Curtis to seek a variance from those BHO limits. *Staff Report*, p. 3, para. 2.

Staff contends that the Commission's conditional use authority under LAMC 12.24.F supersedes BHO grading limitations. *Staff Report*, p. A-10. But the BHO expressly states that "Notwithstanding any other provisions of this Code to the contrary, total Grading (Cut and Fill) on a Lot shall be limited as outlined below." LAMC 12.21.C.10(f). The phrase "Notwithstanding any other provisions of this Code" means that grading quantity and import/export limitations (collectively "grading limitations") set forth in the BHO supersede grading limitations provided under *any other provision* of the Zoning Code, including LAMC 12.24.F. *See* 12-18-13 Letter, Sect. II.A, pp. 20-21 (citing legal authorities on meaning of "notwithstanding").[2]

[2] Curtis has argued that the BHO's "notwithstanding" language was superseded by language in LAMC 12.24.F authorizing conditions allowing grading in excess of statutory limitations. That is wrong for two reasons. *First* and most fundamentally, the language in 12.24.F concerning conditional use authority to exceed grading limitations *pre-dates* the BHO. Thus, the BHO's "notwithstanding" language *expressly supersedes* the Section 12.24.F language. *See* 12-18-13 Letter, p. 21-22. *Second*, even if the Section 12.24.F language post-dated the BHO, which it does not, that language would have been enacted with knowledge of the BHO's superseding "notwithstanding" language and could not therefore be construed to supplant it.

The Staff Report posits that the BHO grading restrictions "were not crafted to take into account such a large-scale school project in this zone, since it is not permitted by right." *Staff Report*, p. A-10. While the BHO was initially drafted to limit grading only for single-family residences, its language was broadened before enactment to encompass all projects within residentially-zoned hillside areas. Planning Staff even conducted a BHO public workshop at the Mirman School in the Mulholland Institutional Corridor, so the broadening of the BHO's scope to include such institutions was no surprise. *See* 4-15-13 Letter, Sect. A.1, pp. 2-3; 12-18-13 Letter, Sect. II.B.2, pp. 23-24. Thus, contrary to the Staff Report's suggestion, the City cannot simply choose to bypass BHO grading limitations that expressly control grading in residentially-zoned hillside areas "notwithstanding" any other provision of the Zoning Code.

Moreover, contrary to the Staff Report's implication, the BHO was designed to accommodate properties of all sizes and uses by granting zoning administrators wide discretion to exceed the BHO's "by right" limitations. *See* 4-15-13 Letter, Sect. A.1, pp. 2-3. Specifically, zoning administrators have discretionary authority to exceed the BHO's 1,600 cubic yards "by right" limitation based on factors including the size and use of an applicant's property. A zoning administrator could thereby allow up to 57,585 cubic yards of grading for the Curtis property without a variance, which is *35 times greater* than the "by right" amount. *Id.* at 3.

Finally, the Staff Report seeks to justify the recommended use of Section 12.24.F to bypass BHO grading limits by highlighting aspects of the property that it claims justify grading in excess of the BHO's generous discretionary limits. *Staff Report*, p. A-11. While unique aspects of a property are properly considered in *variance* proceedings, such topographical distinctions are no justification for using Section 12.24.F to bypass the controlling BHO regulations. The recommended action, which would undermine the integrity of the BHO, is quite simply illegal under the BHO's plain language.

BHO grading limits can be exceeded through the variance process. But Curtis is no longer seeking a variance. In any event, the requisite variance findings cannot be made because (among other reasons) Curtis cannot establish a legally-sufficient "hardship." *See* T. Freeman, letter to W. Roschen (Planning Comm.), Sect, I.D, pp. 6-10 (Feb. 13, 2013) ("2-13-13 Letter"); 4-15-13 Letter, Sect. A.1-3, pp. 2-6. Curtis' contention that "switching" the parking lot and athletic fields that have been in the current configuration without incident for decades is necessary for "safety" reasons is both unsupported by the facts, as shown in Section I.D, pp. 6-10 of the 2-13-13 Letter, and inconsistent with the fact that Curtis may not get around to "switching" the parking lot and athletic fields for as many as 20 more years during the last phase of its expansion—belying the notion that the current layout is unsafe. *Id.* For the same reason, even if Section 12.24.F could be used to bypass the BHO grading limitations, the required findings could not be made.

Significantly, if Curtis were to forgo the parking lot/athletic fields switch on its 27-acre property, it would reduce the grading by 117,600 cubic yards. *Staff Report*, p. A-2. The switch is responsible for 84% of the total grading and accounts for the lion's share of grading export as well. *Id.* The remaining grading could be authorized by a zoning administrator applying its discretionary authority under the BHO and would be more consistent with the Mulholland Design Review Board's request that "[a]ll future projects should be required to have reduced grading solutions." *Staff Report*, p. A-13.

II. There Is No Basis For Granting A Height Exception To Specific Plan Rules

The Staff Report recommends granting an exception from Section 5.D.2 of the Mulholland Scenic Parkway Specific Plan, which limits the height of buildings within the Inner Corridor to 30 feet. *Staff Report*, p. A-11. The recommendation must be rejected because the findings necessary for an exception cannot be made.

A specific plan exception is subject to the same stringent requirements as a variance, including the "hardship" standard. *See* 12-18-13 Letter, Sect. III, p. 25 (citing cases). That standard requires the applicant to prove that its property cannot "be put to effective use, consistent with its existing zoning, without the deviation." *Stolman v. City of Los Angeles*, 114 Cal.App.4th 916, 926 (2003). That standard is not satisfied by evidence that a deviation from code would render the property more valuable, useful or profitable. *See* 12-18-13 Letter, Sect. III, p. 25. Nor can the standard be satisfied by a "self-induced hardship." *Id.* (citing cases); 4-15-13 Letter, Sect. B, pp. 6-10.

The Staff Report's recommended findings are grossly inadequate to satisfy the stringent hardship standard. *See* 4-15-13 Letter, Sect. A.3, pp. 4-6 (describing hardship standard). The Report vaguely states that a gymnasium is not "uncommon" for a school use; a 37-foot ceiling is not uncommon either; and the additional clearance will "allow" sports games such as basketball and volleyball. *Staff Report*, pp. A-11, F-6. There is *no evidence* that any other school in the Mulholland Institutional Corridor has a 37-foot high gymnasium in the Inner Corridor, some do not even have gymnasiums. Thus, an exception is not necessary to establish parity with the neighboring properties. And the Federation has offered *unrebutted* evidence that a *30-foot high* gymnasium is more than adequate to allow sports games, including volleyball and even NCAA-sanctioned basketball. *See* 12-18-13 Letter, Sect. III, pp. 26-27; 4-15-13 Letter, Sect. B, pp. 6-10. Thus, a 30-foot high gym is clearly sufficient for kindergarten through ninth grade students. As a result, there is no factual basis for the Staff Report's proposed "finding" (*Staff Report*, p. F-8, No. 3) that granting the height exception is necessary to preserve Curtis' enjoyment of substantial property rights possessed by neighboring property owners.

The fact that Curtis *prefers* a higher-than-allowed gymnasium is insufficient to establish hardship. *See* 12-18-13 Letter, Sect. III, pp. 27-29. California courts have emphasized that whether a deviation from code would make the applicant's property more valuable or even more beneficial "to the community" "lack[s] legal relevance" under the hardship inquiry. *See* 12-18-13 Letter, Sect. II, pp. 28-29 (quoting *Hamilton v. Board of Supervisors*, 269 Cal.App.2d 64, 69-70 (1969)). That is especially so where, as here, the deviation would allow Curtis to be the only school in the Inner Corridor with a 37-foot high gymnasium, thereby conferring upon it *privilege* not *parity. Id.*; 4-15-13 Letter, Sect. B, pp. 6-10.

The Staff Report, however, ignores the mandated hardship findings and replaces them with findings designed to show that the over-in-height gymnasium would not be so bad or visible. *Staff Report*, pp. F-6 to F-9. First of all, that is not the appropriate standard for a specific plan exception. Second, the proposed findings are deceptive as well as inadequate. The *top* of the proposed 37-foot gymnasium will be visible from Mulholland Drive on the east side of the Mulholland Bridge, as conceded in the Staff Report (at p. A-12). That intrusion into the Mulholland Scenic Corridor's natural viewshed *is* aesthetically significant. A central purpose of the Mulholland Specific Plan is to preserve and en-

hance the "spectacular" mountain views from Mulholland Drive. *See* 12-18-13 Letter, Sect. I.B.2, pp. 9-10 (quoting Mulholland Specific Plan, pp. 2-3). If the proposed gymnasium were built within the applicable 30-foot height limit, the *top* of that gym would not be visible from Mulholland Drive east of the Bridge, which would also be consistent with the Specific Plan's purpose of protecting the natural viewshed. Similarly, the Encino-Tarzana Community Plan encourages "the retention of passive and visual open space," a goal that would also be impaired by the top of a 37-foot high gymnasium's intrusion into the natural viewshed. *Id.*, p. 9 (citing Encino-Tarzana Community Plan, Obj. 5-1, Policy 5-1.1).

The Staff Report also overlooks the adverse impact on the public welfare resulting from granting an exception that is not based on a legally-sufficient hardship. Granting Curtis an exception without an adequate showing of hardship would create *precedent* that could be used by other schools to violate the height restrictions based on similar preferences for higher-than-permitted structures. In that manner, a special privilege granted to a property owner like Curtis has a "domino effect" because it allows the institutional neighbors to receive parity-based variances or exceptions. And that would undermine the integrity of the Mulholland Specific Plan. *See* 4-15-13 Letter, Sect. A.2, pp. 3-4.

III. Mitigation Measures Cannot Be Removed Without The Requisite EIR Analysis

The Staff Report recommends the elimination and modification of mitigation measures imposed on Curtis in 1980 to eliminate or reduce the School's adverse impacts on the environment. Mitigating conditions, however, cannot be eliminated or modified without painstaking analysis within an environmental impact report ("EIR"). *See* 12-18-13 Letter, Sect. I.A.3, pp. 5-6.

"[W]here conditions are imposed on a project, those conditions—and the policies behind CEQA—cannot be avoided by applying for another approval apart from the larger project," regardless of whether those conditions were imposed a day or a decade earlier. *Katzeff v. California Dept. of Forestry*, 181 Cal.App.4th 601, 611 (2010). A mitigating condition considered in an EIR and imposed as a condition of approval may later be modified or deleted *only* if (1) *substantial evidence* supports a finding that the condition has become "infeasible" and (2) that analysis is contained within a publicly-circulated EIR or Supplemental EIR. *Lincoln Place Tenants Assoc. v. City of Los Angeles*, 130 Cal.App.4th 1491, 1508-09 (2005). Because no such EIR analysis has occurred, the previously-imposed mitigating conditions targeted by the Staff Report cannot be modified or deleted. Moreover, even apart from the need for EIR analysis, the Staff Report does not base its recommendations upon substantial evidence establishing the infeasibility of these conditions. That too precludes any modification or deletion of previously-imposed mitigating conditions.

A. The Mitigating Condition Requiring Four Public Trails Cannot Be Deleted

Condition 8(a) of the 1980 CUP required and continues to require that Curtis construct hiking, equestrian and bicycle trails and a "par [exercise] course" along specified open space sections of its property (the "Four Trails Condition"). This requirement was identified as a mitigating condition in the EIR and imposed upon Curtis as an express condition of approval under the 1980 CUP. *See* T. Freeman, letter to Planning Commission, Sect. I.B.2, p. 4 (September 16, 2013) ("9-16-13 Letter");

12-18-13 Letter, Sect. I.A.2, pp. 4-5. Yet the Staff Report does not even disclose that the recommended approval of new conditions would silently and illegally eliminate the Four Trails Condition.

1. The Four Trails Condition Is An EIR Mitigation Measure

The Four Trails Condition was critical to the City's approval of Curtis' highly controversial effort to operate a school within the Mulholland Scenic Parkway. *See* 12-18-13 Letter, Sect. I.A.2, p. 5. The City's Planning Department, along with certain citizens groups, vehemently opposed Curtis' *three* applications for conditional use approval between 1977 and 1980. The Planning Department "strongly opposed" issuance of a CUP because it viewed the private school use as inappropriate for the location: "Such a use is in conflict with the adopted Encino-Tarzana District Plan, and the Mulholland Scenic Parkway Ordinance" and "would set a precedent that could be used to destroy the Mulholland Scenic Parkway Plan and all other Scenic Corridor Plans." *See* Exhibits to 12-18-13 Letter, Vol. 2, p. HF 10 (references to Exhibits will be to the "HF" page numbers in Vol. 2).

The Four Trails Condition was essential to Curtis' eventual success in obtaining a CUP. *See* 12-18-13 Letter, Sect. I.A.2, p. 5. The EIR certified by the City Council in November 1978 specifically described the Four Trails Condition as a "mitigation" measure for the proposed school's potential adverse impacts on the Mulholland Scenic Parkway. *See* HF 73-75. After Curtis' initial application proved unsuccessful, a Final Supplemental Report to the EIR ("Supp. EIR") was certified by the City Council in December 1979. *See* HF 145.

The Supp. EIR considered a revised Curtis application, with a lower student enrollment and grade range (among other things), but the revised application did not include the Four Trails Condition. The Supp. EIR analysis disclosed that elimination of this mitigation measure would have unmitigatable adverse impacts on the environment. *See* HF 5. As stated in the Supp. EIR, the City's Bureau of Engineering recommended that the Four Trails Condition be imposed to mitigate adverse impacts to the Mulholland Scenic Parkway. *Id.* As stated in the Supp. EIR, under the heading "Net Unmitigated Adverse Impacts," "Impact will be reduced to an acceptable level if mitigated as proposed by Bureau of Engineering." *Id.* In response to comments, the Supp. EIR responded to the Bureau of Engineering's comment that the Four Trails Condition should be imposed: "Response: The recommendations of the Bureau of Engineering are included in the 'Summary of Impacts' section of this report. The Planning Commission, in its action on this matter, should include the Bureau's recommendations as conditions of approval." *See* HF 9; *see also* HF 13 (Suppl. EIR disclosure that "the applicant's proposal to delete the bicycle path, hiking and equestrian trails is not endorsed by the Bureau of Engineering or Environmental Review staff"). In light of that Supp. EIR analysis, Condition 8(a) of the 1980 CUP requires that Curtis install the Four Trails. *See* HF 163.

2. Curtis Has Violated The Four Trails Condition For 30+ Years

The Staff Report "finds" that Curtis "has demonstrated compliance with the respective conditions of [its 1980 and 1989] entitlement[s]." *Staff Report*, p. F-3. But there is no question that the 1980 CUP

required and requires Curtis to install the Four Trails and there is no question that it has not done so. Curtis is therefore *not* in compliance with its CUP obligations.[3]

3. The City Must Impose (Not Delete) The Four Trails Condition

The Staff Report completely ignores the Four Trails Condition, even though adoption of the newly-proposed conditions would eliminate that Condition. Eliminating the Condition, however, would violate the City's obligations under CEQA, which requires agencies that adopt mitigation measures to actually implement those measures. *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 358-59 (2001). As the City of Los Angeles has previously been advised by the Court of Appeal, "Mitigation measures are not mere expressions of hope," therefore the City "cannot simply ignore them." *Lincoln Place*, 130 Cal.App.4th at 1508.

Moreover, the "passage of time" does not "on its own render the mitigation inoperative." *Katzeff*, 181 Cal.App.4th at 614. The City must implement the Four Trails Condition unless it demonstrates, through the formal EIR process, that the mitigation measure is no longer feasible. *Id.* at 613-14. (And if a mitigation measure proves to be infeasible in the EIR analysis, substitute measures must be adopted to mitigate potentially significant impacts.)

Since the EIR process has not been invoked to analyze feasibility, the Four Trails Condition must be included as an express condition of any new CUP.

B. The Proposed CUP Would Improperly Modify The 1980 Grading Mitigations

The 1980 CUP is subject to mitigation measures that (1) limit the total amount of grading to 465,000 cubic yards and (2) require that all grading be balanced on site. *See* 12-18-13 Letter, Sect. I.C.1, pp. 11-13. Limitations on the *amount of grading* and the requirement to *balance on site* are "mitigation measures" analyzed in the EIR. *See* HF 51-61 (describing limitations on grading as mitigation measures); HF 60 (describing "Mitigation measures," including requirement that "[a]ll grading is to be on-site with no importation of foreign fill or exportation of native soil"); HF 166-67 (describing grading limitations as "Mitigation Measures"). The proposed conditions recommended in the Staff Report, however, would modify those mitigation measures by authorizing a 135,000 cubic yard increase in total grading and allowing the exportation of graded material. These modifying conditions cannot be approved because they were not analyzed in an EIR.

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[3] Curtis has also violated CUP Condition No. 20 precluding Curtis from renting its fields "to any individual or organization" by regularly renting its athletic fields to summer sports camps (*See* 9-23-13 Letter, Sect. D, p. 9) and Condition No. 1 that limits the school to "grades kindergarten through ninth grade," which has been violated by Curtis operation of pre-school on the premises. *See* J. Given, letter to Planning Commission on behalf of Bel Air Skycrest Property Owners' Association (March 24, 2014).

1. The 135,000 Grading Increase Cannot Be Approved Without EIR Analysis

The Staff Report states that permitting Curtis to grade 134,800 cubic yards of soil, in addition to the amounts previously graded, represents a 20% increase above the 500,000 cubic yards permitted under the 1980 CUP. *Staff Report*, p. A-8. That is incorrect on two counts. *First*, the maximum allowable grading under the 1980 CUP is 465,000 cubic yards—not 500,000 cubic yards—and Curtis has already graded 466,826 cubic yards (as acknowledged in the Staff Report). *Second*, the 1980 approval authorized Curtis to grade a maximum of 465,000 cubic yards solely for the purpose of achieving the approved Site Plan—it did not authorize any grading apart from the approved Site Plan.

The Staff Report states that Curtis was permitted to grade a total of 500,000 cubic yards under the 1980 CUP. Not true. On the eve of the Planning Commission hearing on Curtis' CUP application, Curtis further reduced its grading from 495,000 to 465,000. Specifically, as stated in Curtis Foundation's February 5, 1980 letter to the Planning Commission, Curtis agreed to "superimpose the playing fields." *See* HF 151. This "new refinement" further reduced its grading by approximately 30,000 cubic yards that, when added to other reductions "since the last application [seeking 595,000 cubic yards (HF 145)], represent[s] a total decrease in earth movement of approximately 22% or 130,000 cubic yards." *Id.* The Site Plan approved by the Planning Commission, Exhibit A-4 to the CUP (HF 172), shows that the playing fields were superimposed, further evidencing the reduction of grading to 465,000. *See* HF 155 (new Site Plan illustrating transposed fields) & HF 156 (prior Site Plan, before fields were transposed). Moreover, in an April 7, 1980 letter to the City Council, Curtis' legal counsel also confirmed that the grading limit had been reduced by approximately 30,000 cubic yards below the previously proposed 495,000. *See* HF 185-86. Although several appeals were filed after the Planning Commission granted the CUP, those appellants withdrew their appeals after learning of the grading reduction. *See* HF 200 (noting withdrawal of appeals); HF 186 (noting that the Hillside Federation and other environmental and homeowner groups had withdrawn their 1980 appeals due to this reduction in grading).

Since Curtis has already exceeded the approved 465,000 cubic yards of grading (*Staff Report*, p. A-8), no further grading may be permitted outside the EIR process.

Moreover, contrary to the Staff Report, Curtis was not granted the abstract right to grade 465,000 cubic yards outside the specifically approved Site Plan. The CUP approval findings make clear that Curtis was required to minimize its grading in achieving the approved Site Plan—not simply grade to the maximum allowable 465,000 cubic yards. The findings "provide for minimum grading" and emphasize that the "applicant is required to minimize: (1) the overall amount of grading required" to implement the approved project. *See* HF 166-167 (Findings No. 2, Mitigation Measures—Feasible). As stated in those findings, this limitation 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" condition in the CUP findings. *See* HF 168. Thus, Curtis was not granted the abstract right to grade 465,000 cubic yards, it was permitted to grade a maximum of 465,000 if and only to the extent necessary to achieve the approved Site Plan.

2. The "Balance on Site" Mitigation Cannot Be Deleted Without EIR Analysis

The "Mitigation Measures – Feasible" section of the 1980 CUP also confirms that "[t]otal grading requirements have been decreased and grading is entirely within the site, there being no import or export of earth." *See* HF 168. This mitigating condition cannot be modified or deleted absent EIR analysis demonstrating on the basis of substantial evidence that the condition is infeasible. No such showing has been made. Consequently, even if permitted to conduct further grading, Curtis would still be required to conduct all grading on site, with no import or export.[4]

C. Curtis' Expansion Also Violates The Mitigation Measure Requiring It To Maintain 80% Of Its Property As Open Space

The EIR imposes and the Site Plan approved under the 1980 CUP implements as a mitigation measure a requirement that Curtis maintain 80% of its property as open space. The proposed CUP would improperly modify that mitigation without the requisite EIR analysis by expanding development into areas designated as part of the 80% open space under the 1980-approved Site Plan.

The EIR states: "Mitigation measures The project has been designed to be compatible with adjacent low intensity land use by preserving open space areas." *See* HF 65. In assessing the project's impact on aesthetics, the EIR states that "Scenic values in this area are significant, including the Santa Monica Mountains . . ." *See* HF 66. It further states that "[t]he aesthetic change that would be brought about by this project is the alteration of existing topography." *See* HF 67. Under "Mitigation measures" it states that the "Curtis site will employ significant landscaping and open-space areas (80 percent of the total project area)." *See* HF 69.

The Site Plan approved under the 1980 CUP implements this mitigation measure by arranging development on the property in conformance with the 80% open space mandate: "The new site plan for the school would provide for clustering of structures on less than 11% of the property which assures the preservation of open space." *See* HF 162 (Case No. 28764 (CU) CUP Findings, Feb. 7, 1980). The Findings in support of the Statement of Overriding Considerations specify, under "Mitigation Measures – Feasible," that although there will be "[a]dverse impacts . . . on aesthetic values associated with present views of the site," those impacts will be "mitigated" because, among other things, "[t]he development will be of low density and provides for approximately 80% of the area in open space which includes natural vegetation, landscaping, turfed playing fields and public trails." *See* HF 168.

The 80% open space mitigation measure was so important that Curtis was required to record a covenant running in perpetuity with the land assuring that "no buildings shall be constructed in the playing fields and open space areas depicted on Exhibit A-4," which is the Site Plan. *See* HF 165 (Case No. 28764 (CU) Conditions, Feb. 7, 1980); HF 195 (Covenant).

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[4] Additionally, the BHO now precludes the export of graded materials in excess of 1,000 cubic yards. *See* LAMC 12.21.C.10(f)(2)(i).

The Staff recommended CUP, however, does not require continued compliance with the 80% open space requirement and allows substantial encroachment into the open space areas. Without an EIR analysis based on substantial evidence that the 80% requirement is infeasible (which it obviously is not), the recommended CUP would improperly modify the 80% open space mitigation measure.

D. The Gymnasium Violates The 500-Foot Setback Mitigation Without EIR Analysis

The Staff Report recommends approval of a gymnasium building within 500 feet of Mulholland Drive. *Staff Report*, p. A-11. That would improperly violate the mitigation measure precluding any structures within 500 feet of Mulholland Drive without the requisite EIR analysis.

The original EIR identifies the 500-foot setback from Mulholland Drive as a "[m]itigation measure" designed to minimize adverse aesthetic impacts "on views from Mulholland Drive." *See* HF 74-75. The 1980 findings in support of the Statement of Overriding Considerations likewise identifies this setback as a feasible mitigation measure. *See* HF 167. The mitigation measure is implemented through Condition 7 of the 1980 CUP, providing "[t]hat no structure on the subject property shall be located within the 500 foot scenic corridor . . . " *See* HF 163.[5] But the proposed CUP improperly violates the mitigation measure (without the requisite EIR analysis) by permitting the proposed gymnasium to encroach into the 500-foot setback.

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For these reasons (and those stated in the Hillside Federation's other letters and the letters filed on behalf of the Bel Air Skycrest Property Owners' Association and Brentwood Residents Coalition, which are incorporated by this reference), the Commission should (1) deny the application for a conditional use permit and (2) reject as inadequate the proposed mitigated negative declaration.

Very truly yours,

Thomas R. Freeman

[5] The proposed CUP also provides for a parking lot that would partially encroach into the 100-foot setback from Mulholland Drive in violation of the Mulholland Scenic Parkway Specific Plan. *See* Dept. of City Planning Recommendation Report CPC 2009-837-CU-SPE-DRB-SPP-SPR-DI-ZV, at A-6 (Feb. 28, 2013).