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January 6, 2021

**VIA EMAIL jdriver@cityofpasadena.net,
tmolinar@cityofpasadena.net**

Paul Novak Hearing Officer
Jennifer Driver, Planner
Pasadena Planning & Community Development
Department, Planning Division
175 N. Garfield Ave.
Pasadena, CA 91101

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Re: Objections to Hillside Development Permit #6837
801 S. San Rafael Ave., Pasadena, CA 91105

Dear Mr. Novak and Ms. Driver:

This firm and the undersigned represent Roxanne Christ, who lives at 815 S. San Rafael Ave. Our client's home is immediately adjacent to the proposed project at the former John K. Van de Kamp residence, 801 S. San Rafael Ave. ("Project"). Please keep this office on the list of interested persons to receive timely notice of all hearings, votes and determinations related to the proposed approval of the Project or any approval or permit issuance at the Project site.

Pursuant to Public Resources Code Section 21167(f) and other applicable laws, please provide a copy of each and every notice issued by the City in connection with this Project or the Project site. We adopt and incorporate by reference all Project comments and objections raised by all others during the administrative process, as well as the environmental or permit review and land use entitlement processes for the Project.

The proposed Hillside Development Permit ("HDP") must be denied. Contrary to the staff recommendation, the project does not qualify for a Class 3 categorical exemption from the California Environmental Quality Act ("CEQA") and appropriate environmental review must precede any decision on this matter. Furthermore, for numerous reasons, the findings necessary for the requested HDP cannot be made. Nor do

the proposed conditions to the proposed HDP begin to address the potential damage to our client's property from vibration and dust from the proposed demolition and construction. We urge that the application be denied.

Without waiving any objections and reserving all of our client's rights to oppose the HDP request and challenge by appeal, if the Hearing Officer is not inclined to deny the requested HDP, we request the hearing be continued so that we may consult with experts who can recommend state of the art conditions to approval that will minimize vibration and dust and best protect our client's property. If, despite this request, a continuance is not granted, then we request that the HDP approval be conditioned with enforceable conditions set for the in the Exhibit titled "Conditions Requested by 815 S. San Rafael Property Owner" filed along with this letter.

I. INTRODUCTION.

The proposal for an HDP is but latest segment of a significantly larger project, which has never been concretely defined. As a result, the historic status of the Project site and the propriety of significant work already done have never been properly considered by the City or properly noticed to the public.

The Project site is 801 S. San Rafael Ave., which is eligible for historic landmark status under the Pasadena Municipal Code. This residence is where John Van de Kamp and his family lived from 1987 until his death in 2017. It is a beautiful example of Monterey Colonial style architecture built in 1949. Mr. Van de Kamp was a person of immense significance to Pasadena, Los Angeles County, and the State of California. On December 16, 2019, Kevin Johnson, Senior Planner for Design and Preservation, wrote in Plan Review Comments that the "house appears eligible for landmark designation." We understand that Pasadena Heritage applied to have the residence designated a landmark. The Van de Kamp home would appear to qualify for historic landmark status under Municipal Code § 17.62.040(c) based upon its association with a person of significance to the history of California, Los Angeles and Pasadena and because of the stature of the home. As testament to Mr. Van de Kamp's personal significance, the City recently renamed a nearby bridge in his honor. Thus, the Landmark designation and protection would appear in order for the Van de Kamp home.

In review of the proposed HDP, it is important to note that the proposed HDP is but a segment of a much larger major renovation of the home. The full scope of the work at 801 S. San Rafael has never been disclosed and has been rolled out piece-by-piece. As

a result, significant modifications to the home have already incorrectly evaded the HDP review process. The sequence of construction that has already taken place at 801 S. San Rafael demonstrates a broader, preplanned scope of work done than has been disclosed:

- To start, before September 2019 the Applicant commissioned a soils investigation for plans that already included a “guest house” accessory structure in the rear yard, another accessory structure (the garage) in the front yard, a large --but just under the 500 -square-foot-HDP reviewable-- first floor addition to the back of the house. See the Excerpts from “Soils Engineering Investigation Proposed Additions, Garage and Guest Structure, for This Old House, LLC, dated September 26, 2019, contained in the Exhibits.
- The first permit the applicant pulled was in October 2019, which allowed them to move the gas line from the street to set up future construction.
- In Plan Review, on December, 16, 2019, Senior Planner for Design and Historic Preservation, Kevin Johnson, stated, “house appears eligible for landmark designation.”
- In approximately February-March 2020, the applicant started demolishing the inside of the house. There was no permit for the work. By July, 2020 the entire interior was demolished.
- In April 2020, the applicant pulled building permits to (i) add 466 square feet to the first floor of the main house, (ii) demolish the interior of the second floor and (iii) build a new 600 square foot accessory structure (a new garage) in the front yard (BLD2019-01654). This work is still in process and, according to the City’s Online Permit Center, only 11% complete.
- The applicant made major structural changes, including replacing the house’s ridge boards and, on the east end of the house, the rafters.
- By June 2020 the applicant had removed two thirds of the covered, but unenclosed breezeway between the main house and the guest house.

- On June 6, 2020, the applicant finally applied for a Hillside Development Permit, HDP #6837, which is the subject of this hearing. The narrowed scope of HDP#6837 is to build three more accessory structures in the back yard and demolish 70% of the guest house, the living room of which Mr. Van de Kamp used as his home office.
- In July 2020, the applicant sought permission to add French doors to the East and West facades of the residence and change out most of the windows and doors, and replace some windows with French doors. (DHP2020-10033)

By then, the applicant had already altered 52% of the home's facades, according to an analysis commissioned by our client, from Offenhauser/Mekeel Architexts. (See Letter from Frances Offenhauser dated January 4, 2021, included in our Exhibits, along with a set of slides also showing the locations of the alterations). Adding in the work under the now proposed HDP, boosts the percentage of altered facades to 55%.

With the exception of the instant HDP #6837, all of the applicant's work has been outside the heightened scrutiny required by the Pasadena's Hillside Ordinance. The city has not focused on the totality of this project, perhaps because, like the applicant's neighbors, the city has also not been informed of its overall scope. None of this is addressed in the staff report.

Also not addressed in the Staff Report, but of great significance to our client is the fact that the 70% of the guest house and remaining six feet of breezeway slated for demolition and the proposed Accessory Structure 3 construction, along with all construction-related traffic for Accessory Structures 1, 2 and 3 will take place right next to a museum quality room in our client's home that houses a valuable and irreplaceable museum quality model train collection. The collection is highly susceptible to construction-related damage, including from vibration, dirt and dust.

II. THE DEWITT COLLECTION.

The Project site is adjacent to the distinguished world-class model train DeWitt Collection, located at 815 S. San Rafael Ave. The HDP's proposed demolition and construction is for an area only 24 feet away from the DeWitt Collection.

The DeWitt Collection is housed in a specially built room that holds a museum-quality display of trains, with 1,700 intricately built and painted individual models. This exquisite collection, which attracts visitors from all over the world, is highly susceptible to construction-related damage due to construction and/or demolition-related vibration and noise.

The uniqueness and historic significance of the DeWitt Collection was assessed by Mr. Fred Hill, who owns and operates the Original Whistle Stop train store at 2490 East Colorado Blvd. in Pasadena. Whistle Stop is one of the country's largest model train retailers. Mr. Hill also commissions the manufacture and importation of models from all over the world.

Based on Mr. Hill's assessment, the DeWitt Collection is one of the "world's top privately owned collections" of HO scale model trains. The individual models and the collection as a whole are irreplaceable.

We are including a letter from Mr. Hill in our exhibits. He is not only familiar with model trains generally but is extremely familiar with the DeWitt Collection, specifically. For tax purposes, in 2015 Mr. Hill appraised the collection. Though irreplaceable, it is also valuable. The appraised value and appraisal can be provided separately and confidentially at the Hearing Officer's request.

According to Mr. Hill and as described so movingly in our client's separate letter to the Hearing Officer, the DeWitt model train collection is a "world-class collection of over 1,700 (one thousand seven hundred) individual models." It was assembled by our client's late husband, Bob DeWitt, over the course of 50 years.

The individual models were "super-detailed" by Bob. Most locomotives and passenger train cars were "weathered" by Jerry Spoelma, the country's (if not world's) most renowned model train weathering artist.

Super-detailing a model includes, for example, adding tiny tables, chairs and passenger figurines to passenger cars, and engineers to the cabs of locomotives. It also includes adding hair-width wires and other miniscule train parts to the models themselves.

"Weathering" a model means painting and treating it to look precisely as the real train looked in running condition, in real life. Photographs and other representations of

historic trains are used to determine how they actually appeared when they were in service. “Weathering” a train often includes, for example, adding what look like streaks left by boiling water overflowing down the side of a boiler, and adding tiny pieces of coal spilling out from the tender.

Model train collectors and manufacturers from all over the world have come to tour the collection. The publisher of the Japanese magazine “Train” came from Japan to tour and photograph the collection. A copy and translation of their article along with a summary of the collection that Mr. DeWitt himself prepared around 1994, is included in our exhibits.

The trains are perched on tracks on museum quality shelves in a dedicated museum-quality room at the west end of our client’s house. The room is only about 24 feet away from the Project site. Photos of the DeWitt Collection, the museum-quality room housing the model train collection, and a slide that shows the proximity of the train room to the proposed Project work site are included in the exhibits.

The locomotives contain motors that allow them to operate on train model layouts, such as the famous layout at San Diego’s Balboa Park. This makes them top heavy and prone to falling over.

The models can also be “derailed”. This means the tiny sets of wheels on the underside of the model comes off it’s tracks. Each of these wheel sets rotate around a tiny pin that protrudes from the underside of the model. It is difficult and extremely time consuming to get these derailed wheel sets back on their track while trying not to hold the model in a way that does not damage the model itself. So, just derailling models, let alone knocking them over, has the potential to significantly damage the fragile models. Photos of examples of where this has already occurred are in our client’s separate letter.

Though the trains are capable of running on lay-outs, the models are rarely moved. They are designed and intended to be subject to minimal handling. Because of their detailed fragile wiring, delicate paint, and flawless quality, they cannot just be taken off the tracks and stored in boxes during the proposed construction without damaging them and without the help of experts over a period of several weeks and at great expense. And even then, the fragile models will inevitably and unavoidably be damaged and devalued.

Dust and vibration damages the trains of the DeWitt Collection and, furthermore, construction at the Project site has already produced dust and vibration that has impacted the models.

Last fall, there was considerable noise and vibration produced when the applicant dug up concrete while moving the gas line. It dislodged a number of the models along the west wall of the train room. The construction work and vibration persisted for days. Our client asked the applicant when it would stop. The applicant either didn't respond or gave her several "will be finished by" days and times, none of which proved true.

Dust from the applicant's excavation work in the front yard has penetrated the train room. Although our client has taken every precaution to seal the room off. We are concerned the demolition and construction activities proposed for such close proximity to the DeWitt Collection could be catastrophic.

In April 2019, our client gave the applicant a tour of the train room. She specifically described the risk of damage from vibration, concussive work and dust. The applicant promised to put a tarp over the west side of our client's house but never followed up. (Without expert input, she and we don't know if this would be helpful or sufficient to quell dust, but it would certainly not address vibration.). Our client specifically asked the applicant for plenty of notice before work would be done that could generate vibration, concussive work and dust.

Dust from the applicant's excavation work in the front yard has penetrated the train room. Although our client has taken every precaution to seal the room off. We are concerned the demolition and construction activities proposed for such close proximity to the DeWitt Collection could be catastrophic.

III. SPECIFIC COMMENTS.

A. The City has not Complied with its CEQA Duty to Thoroughly Investigate the Project and Potential Impacts.

CEQA imposes the duty to thoroughly investigate the project activity and potential impacts. Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 398–399 ("While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can."); Guidelines, § 15144. It is the City's duty (not neighbor's) to investigate to ensure an

accurate and full project is evaluated together with impacts. It should not be left to neighbors to ferret out the true scope of a project.

The City has not complied with its CEQA duty to thoroughly investigate and disclose the true scope of the Project and potential impacts on neighboring properties. We urge the Hearing Officer to continue hearing on this matter so that the City can (1) provide a full disclosure of the Project, including but not limited to all prior construction done outside the HDP process, all demolition, excavation and hauling, and (2) conduct a thorough investigation into potential impacts of the Project on neighboring properties.

B. A Full and Accurate Project Description is Vital -- The Project Description Here is Artificially Narrow, Violates CEQA's Anti-Piecemealing Provision and "Whole of the Action" Project Definition, and Frustrates Foundational Principles of the City's General Plan.

The Project for which an HDP is requested is only part of the ultimate project. The prior actions already taken on the Project site in a piecemeal fashion show that the Project is in violation of CEQA's anti-segmentation provisions under Guidelines §§ 15378 (study "whole of the project") and 15165 (single EIR needed for "phased projects"). Guidelines § 15378(c) particularly cautions that the project is an activity, which may be subject to separate governmental approvals. Similarly, Guidelines § 15268(d) cautions that when the project involves both ministerial and discretionary actions (such as a project that, as here, encompasses both demolition and construction), then the agency must treat all as a discretionary action and make it subject to CEQA review.

The effect of violating CEQA's anti-segmentation mandate is manifold: it taints the rest of the CEQA analysis of the project, including but not limited to the analysis of actual individual impacts of the project, mitigation of those individual impacts, cumulative impacts of the Project, identification of proper mitigation measures, as well as the application of any CEQA exemptions.

Piecemealing also gives rise to the violations of CEQA's informational mandates of an accurate, stable, and finite project description, as well as setting of accurate baseline settings against which Project impacts should be measured. Without an adequate baseline description, "analysis of impacts, mitigation measures and project alternatives becomes impossible." County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 953; Guidelines § 15125(a).

CEQA's emphasis on a full and accurate project description goes hand in glove with the City's General Plan and its Guiding Principles. Without a full and accurate project description, public participation is compromised, if not rendered futile. A full and accurate project description that is fairly and timely disclosed to the public is an essential predicate to Guiding Principle Number 7: "Community Participation will be a permanent part of achieving a greater city. Citizens will be provided with timely and understandable information on planning issues and projects; citizens will directly participate in shaping plans and policies for Pasadena's future." (Emphasis supplied.)

CEQA does not provide a definition for the "project." The CEQA Guidelines consistently refer to it as an "activity" and caution against the narrow interpretation of it. Guidelines §§ 15002(d), 15060(c), 15064(b)(1). Guidelines § 15378 particularly states: "(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The Guidelines also provide several examples of "activities" constituting the project. Id. In sum, CEQA forbids piecemealing. California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 193–194.

The above-noted details support the finding that the Project is much more than what is described and may therefore have more individual and cumulative impacts than what appears. Even though the Applicant might have tried to evade CEQA (and the HDP process) on the prior changes to the site, CEQA requires that the City still consider the "whole of an action," which includes the past actions as well. Hixon v. County of Los Angeles (1974) 38 Cal.App.3d 370, 378–379 (Court ordered the Applicant to consider the "cumulative effect of both Phase II and Phase I" tree removal in the subsequent EIR for Phase II, even though trees were already removed in Phase I.) This requires City to use the baseline setting *prior* to the changes taken by the Applicant before this HDP permit.

An accurate and complete description of the Project is essential for CEQA's impact and mitigation analysis. The misleading narrow description in this HDP permit notice, violates CEQA's informational and mitigation mandates and results in the understatement of Project's individual impacts.

C. **The Proposed Class 3 CEQA Exemption is Not Supported by Substantial Evidence.**

“[C]ategorical exemptions must be carefully applied and supported by the evidence.” Save Our Carmel River v. Monterey Peninsula Water Management Dist. (2006) 141 Cal.App.4th 677, 698. “Exemptions from CEQA’s requirements are to be construed narrowly in order to further CEQA’s goals of environmental protection. Projects may be exempted from CEQA only when it is indisputably clear that the cited exemption applies.” Id. at 697 (Citations omitted.) The Class 3 exemption does not apply.

The Staff Report does not contain substantial evidence supporting the claimed Class 3 CEQA exemption. As stated above, the City’s failure to fully investigate the Project and its potential impacts and the unduly narrow Project description taints the entirety of the City’s compliance with CEQA. This includes decisions on CEQA exemptions. For instance, the City’s environmental review does not encompass the significant excavation and demolition work that is an essential part of the project. Nor does the review cover the historic status of the Van de Kamp residence.

Furthermore, the Project, even as narrowly described in the Staff Report, does not meet the requirements for the Class 3 exemption. The exemption is set forth in Guidelines § 15303:

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.” (Emphasis supplied.)

The express language of the Guidelines emphasizes the words “limited”, “small,” and “minor.” What has occurred on the Project site, what is presented under the HDP scope and what is evident from the record reasonably exceeds the noted characterizations of limited, small or minor.

Furthermore, the plain language of the Guideline does not encompass the proposed demolition of approximately 580 square feet of the guest house that is an inextricable part of the HDP application. Where, as here, the proposed demolition of 70% of the

guest house and construction of accessory structures is “part of the project under consideration” the demolition and the construction are both subject to CEQA. Orinda Association v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1172. Clearly, the proposed demolition activities are not “minor modifications” to the building exterior. The exemption does not apply.

D. The Proposed Changes under the HDP Permit Do Not Qualify for Any CEQA Exemption and, Even if an Exemption Is Invoked, The Project Qualifies for an Exception to an Exemption.

As stated above, the Project does not meet the requirements for a Class 3 categorical exemption to CEQA. However, even if the Class 3 exemption were to apply, the Project would still not be exempt from CEQA because the Project falls within the specific exceptions to categorical exemptions that are set forth in Guidelines § 15300.2.

Under the Guidelines, changes to an eligible historic resource (the Van de Kamp residence) are specifically excluded from categorical exemption. Guidelines § 15300.2 (f) provides, “Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”

The historical significance of the Van de Kamp residence and John Van de Kamp’s life to the region and the state, have been addressed above and are chronicled in the nomination of the residence for landmark designation submitted by Pasadena Heritage on file with the City on July 7, 2020 (DHP2020-10023). As well, the residence would appear to qualify for historic landmark status under, at least, Municipal Code § 17.62.040(c). The fact the residence is not currently registered as a historic resource is not determinative for CEQA purposes.¹ In light of CEQA’s primary goal to provide the fullest protection to the environment, the list of historical resources was broadened to include those that have been listed as historic and those that have not been listed, those that have been even denied listing, and yet are eligible as a historic resource. Public Resources Code §21084.1; Guidelines §15064.5. Therefore, for the purposes of CEQA review, the Van de Kamp residence merits consideration as a historic resource and the

¹ The Staff Report states, without explanation, that the Design and Historic Preservation Division determined the home does not meet the criteria for land mark designation. We are unaware of any such determination. In any event, it does not determinative for CEQA purposes.

exemption in Guidelines § 15300.2 (f) specifically precludes the categorical exemption from CEQA.²

Also applicable is Guidelines § 15300.2(c) which provides that a “categorical exemption shall not be used for an activity, where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” The model trains collection creates “unusual circumstances” for the Project and distinguishes the Project from others in the same Class. Particularly, the close proximity of the room housing DeWitt Collection to the Project and its unique, fragile, highly valuable, irreplaceable, and renowned nature, make the collection environmentally sensitive to the proposed construction activity with their associated demolition, grading, vibration, and noise. Therefore, there is a reasonable possibility that the “activity”, i.e., the HDP project, will have a significant effect on the environment due to unusual circumstances. Guidelines § 15300.2 (c), therefore, specifically precludes the categorical exemption from CEQA due to the unusual circumstances.

As such, no categorical exemptions may apply, and environmental review is required under CEQA to identify and analyze significant environmental impacts and impose clear, specific and enforceable mitigations to avoid or mitigate significant construction-related vibration, dust and noise impacts.

E. There is a Fair Argument that the Project May Have Cumulative Impacts.

CEQA also requires the public agency to consider the impact of past, present, and reasonably foreseeable future projects in connection with the Project. Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 394–395 (“a discussion of cumulative effects should encompass “past, present, and reasonably anticipated future projects.”; Guidelines, § 15130(b)(1)(A).

The importance of cumulative impacts analysis under CEQA is well-settled:

“Proper cumulative impact analysis is vital “because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs

² The DeWitt Collection itself may qualify for historical designation and require this matter be excepted from the asserted CEQA exemption.

incrementally from a variety of small sources. These sources appear insignificant when considered individually but assume threatening dimensions when considered collectively with other sources with which they interact.” Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1214–1215.

Thus, even where no piecemealing was found, courts still alternatively look at whether the agency analyzed the cumulative impact of various activities. See, e.g., Christward Ministry v. County of San Diego (1993) 13 Cal.App.4th 31, 46–47; Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 99.

Because an accurate, stable, and finite project description has not been presented, the City cannot discharge its duty under CEQA because it cannot gauge the full environmental impact of the true Project.

F. The HDP Application Must be Denied Because it Conflicts with the Hillside Ordinance

In addition to CEQA, the Hillside Ordinance (“HO”) itself requires an enhanced level of environmental analysis. The entire structure of the HO is designed to provide for community notice and opportunity for input, conditions appropriate to the application and protection of neighboring properties. The purpose of the Hillside Development Permit is stated in Municipal Code § 17.29.080, “The Hillside Development Permit provides a review process for the City to consider the appropriateness of proposed development on hillside lots to ensure that a proposed project minimizes its visual and environmental impact.” (Emphasis supplied.) The Code’s directive is definitive and unambiguous: the process must “ensure” that visual and environmental impact is minimized.

Required findings for an HDP are at PMC § 17.29.080 (F). The findings must include the same findings required for a Conditional Use Permit, which are at PMC § 17.61.050(H). Without extensive and effective conditions, the Project cannot satisfy the findings required because the Project will, under the circumstances, be detrimental to the health, safety and welfare of the applicant's neighbor (our client) and will be detrimental or injurious to our client’s property and improvements.

G. The Findings Required for an HDP Cannot Be Made

The requirements for approval of the requested HDP are set forth in the Pasadena Municipal Code § 17.29.080(F) as follows:

Findings and decision. The Hearing Officer may approve, conditionally approve, or disapprove a Hillside Development Permit application, and shall record the decision and the findings upon which the decision is based. The Hearing Officer may approve the permit only after first making the following findings, in addition to the findings required by Section 17.61.050 for Conditional Use Permit approval:

1. The design, location, and size of proposed structures and/or additions or alterations to existing structures will be compatible with existing and anticipated future development on adjacent lots, as described in Section 17.29.060.D, and in terms of aesthetics, character, scale, and view protection.
2. The placement of proposed structures avoids the most steeply sloping portions of the site to the maximum extent feasible and minimizes alteration of hillside topography, drainage patterns, and vegetation.

The requested HDP can be granted “only if *all* applicable legislative requirements have been satisfied.” Topanga Ass’n for a Scenic Community v. County of Los Angeles (1974) Cal.3d 506, 518 (Emphasis in original). Each required finding must be supported by substantial evidence in the record. Id. at 511.

In reaching decision on the requested HDP, the interests of neighbors must be considered. This is clear from the required findings set forth in PMC § 17.29.080(F) and in California law. “It is appropriate and even necessary for the county to consider the interests of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence on this issue.” Desmond v. County of Contra Costa (1993) 21 Cal.App.4th 330, 337. In reviewing a request for land use approvals, the physical, aesthetic and monetary impact on neighboring properties may be considered. Dore v. County of Ventura (1994) 23 Cal.App.4th 320, 328-329.

Against this legal backdrop, considering the current record, as demonstrated below, not all findings can be made for the requested HDP.

1. Finding #1 (Section 17.61.050.H.1)

The proposed HDP work does not comply with all applicable provisions of the Zoning Code because the proposed Project is only one segment of a larger major renovation project that requires a broader HDP. This critical issue cannot be cured by evaluating only the minimal and limited materials submitted for this HDP or the staff report covering them.

The instant HDP application represents a misapplication of the Hillside Ordinance. A fact that illustrates this Project's unfortunate path is this: We are now holding a public hearing for an HDP three more accessories totaling 1,480 square feet in the back yard, when the applicant, without notice or hearing was already given a misguided and incorrect green light to build an 600 square foot accessory structure in the front yard.

Had the entire project been presented for an HDP, as it should have been (and can still be), the entire project could have been considered, subjected to public review and comment, and appropriately conditioned. As demonstrated by the project description and supporting proposed site plan, excerpts of which are included with our Exhibits, close to the full project was known more than a year ago, yet the pieces of the project have been rolled out bit by bit. As demonstrated below, the applicant's overall project qualifies as a major renovation and should have been presented as such.

Changes to the Facades

PMC § 17.29.030.A. requires an HDP for any of several kinds of activities, one of which is a "major renovation". Section 17.29.060.E.a defines "major renovation" as "the alteration of more than 50 percent of existing wall facades by exposing the framing," not counting the "removal and replacement of existing exterior finishes or general maintenance."

As illustrated in the accompanying Exhibit titled "Facades", the applicant has already taken more than 50% of the facades down to the framing without an HDP in violation of the zoning code. Pictures of the changes described below are contained in our Exhibits.

- On the front (north) façade of the house, the applicant has removed four double-hung windows and installed French doors in their place.

- On the rear (south) façade, the entire face of the first story has been removed to make way for a new kitchen area that is being expanded into the back yard as part of a 466 square foot enlargement.
- On the 815 S. San Rafael side (east) façade, half the wall has been opened up and is being extended into the back yard as part of a 466 square foot enlargement.
- On the 787 S. San Rafael side (west) façade, the one story rear (south) end has been removed to make way for the new kitchen area extending into the back yard as part of the 466 square foot enlargement. A window on the second story has been removed. A door has been added.

We are concerned that to obfuscate the fact that a majority of the facades have been altered, the applicant claims that the guest house is actually part of the main house; that it is only a playroom which is part of the main dwelling structure. The facts belie this fiction.

As Mrs. Van de Kamp, wrote in an email to our client: “John, Diana, and I lived in the main house at 801 S San Rafael for 32 years. The smaller structure behind the main house to my knowledge has always been a guest house. There is a large room my husband used as an office, two baths, one for pool users, and one small bath attached to the guest bedroom. The main room had a lovely view of the backyard and pool. It had a small kitchen just off the breezeway. It was only used as a guest house and office for our thirty two years of living in 801 S San Rafael Ave. The previous owners The Boswells also used it only as a guest house.” A photo of Mr. Van de Kamp taken inside the guest house living room is included in our Exhibits.

Perhaps the strongest proof that the guest house is, in fact a guest house and not a “playroom” is the sign the applicant taped to their door this summer, which read: “HELLO. We are home in the rear guest house.”

The applicant’s second way of obfuscating their façade renovations is to set up a specious argument that the guest house is not a detached accessory structure but instead part of the main house. The applicant contends that a 15 foot long covered walkway that ran between an exterior door of the house and an exterior door of the guest house somehow merged the two structures into one structure. This too is belied by the facts.

The breezeway was not at all the kind of enclosed structure that creates a single dwelling. To the contrary, as Mrs. Van de Kamp described this area, it was an unconditioned walkway with indoor/outdoor floor carpeting that shielded her from being rained on when she went out to get into her car in the adjacent carport. It was, in fact, so open and insecure that the Mr. and Mrs. Van de Kamp were careful never to leave their dogs in the breezeway for any length of time for fear they would be attacked by coyotes. (Sadly, coyotes had attacked and killed two of their earlier dogs while they were out in the backyard.

Thus, regardless of what the applicant calls or claims the guest house was used for, and irrespective of the (now largely demolished) breezeway, the guest house is not part of the main dwelling. And, in turn, proposed Accessory Structure 3 is not the conversion of an existing portion of the main dwelling as the project description materially and deceptively claims. Nor is the fact that the applicant hasn't just yet demolished the sides of the guest house mean that a "major renovation" is not already underway.

As described above, the applicant is in the middle of an ongoing major renovation. That renovation has already and continues to be an activity that alters a majority of the facades of the residence. That activity requires an HDP which, in violation of 17.29.030.A, the applicant does not have, and which this HDP application does not cover. Accordingly, the HDP application should not have been processed and cannot be approved unless and until the applicant obtains an HDP for the entire ongoing and continuing major renovation activity that is still underway.

The Proposed HDP is a Cherry Picked Segment of the Larger Renovation Project.

The proposed work under HDP Application #6837 represents but one piecemealed segment of the applicant's overarching major renovation of this property, which renovation has been in process for more than a year and is without end. The staff's inability to describe what is "existing" without assuming that all work under the 01654 Permit has been completed—work which is only 11% complete according to the city's online permit center--evidences the fact that the work proposed under HDP #6837 is but one cherry picked segment of the larger major renovation of this property. And it goes without saying that an HDP application based on "aspirational" rather than actual existing building dimensions and conditions is indefensibly confusing.

The applicant should have been required to obtain an HDP for the entire renovation project, before the house was gutted (without a permit) and well before the

first of its four accessory structures—the garage hurriedly built in the middle of the front yard shown below—was allowed to go forward. To approve this HDP application without first requiring the entire renovation project reviewed, will have the unintended effect of ratifying and compounding mistakes that have come before.

The appropriate way forward is not to bar all future development of the site, but rather to stop work, take stock of where the project stands and get a clear and comprehensive understanding of where the project is going.

Perhaps even worse than ratifying and compounding past mistakes, if the Hearing Officer approves an HDP for this single, cherry picked segment of the overall renovation project, that approval will enable the applicant to evade more detailed reviews of potential future project segments of its overall renovation project. Based upon this developer's several other Pasadena single family home renovations and resales and strategy to date, we think it is not just foreseeable but obvious that there are more segments to this overall project to come.

2. Finding #2 (Section 17.61.050.H.2)

Furthermore, the proposed HDP raises fire safety issues, including the applicant's failure to add sprinklers after gutting the main house, failure to include sprinklers in the accessory structures, and insistence that they should be allowed to keep a once fully operable fireplace in an accessory structure if they promise to make it inoperable in the future. Fireplaces are prohibited in accessory structures, whether "inoperable" or not. PMC §17.50.50(B).

3. Finding #3 (Section 17.61.050.H.3)

The proposed HDP is not in conformance with the General Plan.

The Noise Element of the City's General Plan is specific about the need to minimize noise in residential neighborhoods. The HDP and proposed conditions are incompatible with standards required by the General Plan as illustrated below:

Noise Element Policy 7b states, "The City will encourage limitations on construction activities adjacent to sensitive noise receptors as defined in Figure 1." Residential uses are defined as sensitive noise receptors in Figure 1. Yet, even with the

extraordinary circumstances presented, neither the staff report, nor findings nor conditions contain any limits on construction activities.

Noise Element Policy 7c states, “The City will encourage construction and landscaping activities that employ techniques to minimize noise.” Yet, even with the extraordinary circumstances presented, neither the staff report, nor findings nor conditions contain any discussion or conditions requiring construction techniques that minimize noise.

The HDP application is also inconsistent with General Plan directives to protect and preserve historic resources. Land Use Element GOAL 8, requires “Preservation and enhancement of Pasadena’s cultural and historic buildings, landscapes, streets and districts as valued assets and important representations of its past and a source of community identity, and social, ecological, and economic vitality.” Review of this HDP should have proceeded and should proceed now with recognition of the historic significance of the Van de Kamp house.

Furthermore, the piecemeal processing of the applicant’s major renovation project has deprived the public of appropriate participation in the planning and conditioning of the Project – or certainly the level of participation that would flow from the Project’s historic status and from the hillside overlay. This is inconsistent with one of the guiding principles of the General Plan which is to encourage public participation in the planning process.

4. Finding #4 (Section 17.61.050.H.4)

This finding cannot be made because, under the specific circumstances of this case, the proposed project would be detrimental to the health, safety and welfare of our client, who resides right next door to the project to the east, at 815 S. San Rafael, which home houses the DeWitt Collection, a one-of-kind, irreplaceable, world-class, museum quality model train collection that is highly susceptible to damage by vibration and dust.

The proposed finding states, “The Project will be constructed in in such a manner as to minimize impacts to surrounding property owners.” However, there are no facts presented to support this statement and it is a meaningless recitation of what is supposed to be the case based upon General Plan requirements. “Mere uncorroborated opinion or rumor does not constitute substantial evidence.” CEQA Guidelines, § 15384(a); Schaeffer Land Trust v. San Jose City Council (1989) 215 Cal.App.3d 612, 621, fn. 6. We have

presented and the City is aware of the significant risk to our client's property from construction vibration, noise and dust and the City is aware of the close proximity of the DeWitt Collection to the proposed work site. Nowhere does the Staff Report mention these circumstances and nowhere does it contain any measure or condition to prevent resulting construction caused damage. Nor has the staff requested more time to do so.

Likewise, the statement under Finding No. 4 that "the Project is required to comply with all applicable conditions of approval" utterly fails to address the special risk to our client's extraordinary collection. Leaving aside the question of what an "applicable" condition might be, none of the conditions of approval contain any conditions eliminating, reducing or even addressing construction caused vibration and dust. Despite the extraordinary circumstances presented, there is nothing in the Findings or Conditions that address, or limit construction caused vibration and dust and damage.

Therefore, absolutely no evidence has been presented upon which the Hearing Officer could conclude that the "establishment and maintenance of the use would not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing" directly next door. To the contrary, the substantial evidence is clear that the finding cannot be made.

5. Finding #5 (Section 17.61.050.H.5)

This finding cannot be made because the use as described and conditionally approved would absolutely be detrimental or injurious to our client's property and improvements. Again, despite the extraordinary circumstances presented, there is nothing in the Findings or Conditions that address, or limit construction caused vibration and dust. Therefore, finding number 5 cannot be made. To the contrary, the substantial evidence is that the use (specifically its construction), as described, would be detrimental and injurious to our client's property.

6. Finding # 7 (Section 17.29.080.F.1)

This finding cannot be made because the proposed HDP, as described and allowed in the Staff Report, are not compatible with the existing development and use of our client's home and specifically her train room housing the DeWitt Collection.

IV. CONCLUSION.

As explained above, the proposed HDP does not meet the requirements for a Class 3 CEQA exemption and environmental review is required, but has not yet been done. Furthermore, allowing the Applicant to proceed with the Project in piecemeal fashion, as has been the case to date, is contrary to the letter and spirit of the Hillside Ordinance, deprives neighbors opportunity for notice and hearing, and subverts CEQA's mandates to study the "whole of the action" and cumulative impacts, as well as the identification of proper mitigation measures. Under the present circumstances, not all of the the findings for a Hillside Development Permit can be made. The staff report's recommended conditions do not address the potential damage to our client's property from construction vibration, dirt, dust and other byproducts. Therefore, the application must be denied.

If the hearing officer is not inclined to deny the HDP request, without waiving any rights or objections, we urge the City to continue the hearing on this matter so the City may comply with its duty of thorough investigation under CEQA as requested in this letter and so that our client will have opportunity to consult with experts to ascertain specific conditions of approval that will protect her home and property. In any event, should the HDP be considered for approval, such approval should be extensively conditioned, including, but not limited to, the conditions included in our exhibits.

Very truly yours,

/s/ Robert P. Silverstein

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl

REQUESTED CONDITIONS OF 815 S. SAN RAFAEL PROPERTY OWNER

Requested Conditions if, and without waiving any rights to challenge, the Hearing Officer approves the HDP Application.

Conditions Relating to the Train Room¹

1. An overall plan for handling vibration and dust risk that needs to include at least the following:
 - a. Performing a pre-work inspection of the collection to establish a baseline for the existing condition of the collection.
 - b. Outlining base precautions to be taken to prevent damage.
 - c. Limiting vibration from the work to 0.12 inches per second. That is, cap ground motion velocity (PPV-peak particle velocity) at 0.12.
 - d. Installing an electronic vibration monitor that measures the PPV continuously and sends a message to the developer and me whenever the cap is exceeded. It needs to keep a record of all measurements. The monitor should be installed on our shared property line closest to the train room.
 - e. An immediate work stoppage when the 1.2 PPV is exceeded.
 - f. Keeping dumpsters well-away from the train room and shielding them from the train room.
 - g. Keeping dumpsters covered and spray water mist to keep debris wet at all times
 - h. Covering all trucks carrying demo debris or other material off-site.
 - i. Erecting effective dust barriers.
 - j. Using wet saws for brick and masonry cutting. For re-pointing work, remove mortar with hand tools, and avoid mechanical grinding.
 - k. Identifying and reviewing excavation and demolition methods for impact on the train room.
2. A mechanism for compensating the trust that owns the collection for damage in a way that does not require litigation or judgment enforcement (e.g., performance bond or letter of credit).

Conditions Related to Accessory Structure 3, the New Rear Yard Extension and the Breezeway to be Demolished,

1. Install a permanent plantings be added and maintained in the side yard along the entire length beginning at the southeast corner of the east side of Accessory Structure 3 and ending at the location of the original southeast corner of the main house (i.e. my back yard gate) to screen the massing of Accessory Structure 3 from the 815 property, and to provide sound, dust and privacy protection from the proposed "cabana" like structure

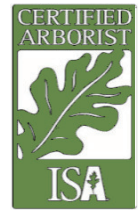
¹ These are likely incomplete and inadequately described, as I have not been able to locate and consult a vibration and dust expert, or obtain the project-related information I need to give him or her assess risk levels and protective measures that are needed.

that will be built there. The foliage will be no less than 13 and no more than 15 feet high. It will be maintained and kept healthy, but not make work for me. Please see my arborist report prepared by Rebecca Latta Arboricultural Consulting, for additional explanation.

2. Keep and maintain existing trees on the subject property's east side using a qualified and licensed tree care service provider to prune with the goal of preserving the height, form and health to maintain privacy, sound and dust screening, and don't over-prune or shorten trees on subject property's east side that currently provide dust, sound and privacy screening including in particular, fern pine trees #51-62, and Ash trees 49 and 50, and Trees 41-47.
3. Take measures to ensure that water runoff from 801 property does not travel to 815 property. The 801 property is flat, as is 815; however, there is about a 4-6 inch step down from 801 to 815 depending on where along the property line one stands.

Conditions Related to Fire Safety

1. Require the fireplace in Accessory Structure 3 be removed. It violates the code.
2. Require accessory structures 1 and 2 structures be fitted with fire sprinklers given their distance from the street.



Rebecca Latta Arboricultural Consulting

CERTIFIED ARBORIST #WE4264A • rlattaconsulting@gmail.com • T 626.272.8444

359 NORTH WESTRIDGE AVENUE, GLENDORA, CA 91741

JANUARY 5, 2021

Roxanne Christ De Witt
815 S San Rafael Avenue
Pasadena, CA

Re: Tree Protection and Screening Concerns Resulting from the Development of 3 Accessory Structures at 801 South San Rafael, Pasadena

Transmitted via email to: Choochoodew@icloud.com

Dear Roxanne,

This report is written to summarize the results of my site visit on December 18, and to provide findings from my investigation of client-provided documents regarding tree protection for your property adjacent to the new construction and impacts to screening (hedges and other foliage) between you and the three new structures. You had also requested an opinion of the feasibility of adding screening plantings to screen accessory structure (AS) #3.

Based on the information relayed to our office, your neighbor is renovating the property, demolishing part of one currently adjoined structure (a guest house/playroom) and adding two new accessory structures in the rear yard of the property. This includes changes to a structure within 25 feet of the property line shared between your two properties. In light of the HDP#6837 hearing scheduled for January 6, I have provided my professional opinion regarding protection of the trees and hedges on your property, and our office has made recommendations regarding screening preservation on their property to protect your privacy and screen massing of AS#3. We have also described measures that could be implemented in a potential agreement with the neighbor or as conditions of the HDP permit issuance.

Our office was unable to review a copy of the report from the neighbor's arborist, and therefore it was not possible for us to accurately evaluate impacts to your trees from the new construction or provide a differential opinion. Our office has relied on the plans submitted to the City, including the tree map that shows only the tree's approximate locations and whether they will be retained. We do not have enough information to know whether the trees located

on your north property line will be adequately protected (OP 42, 48 and shared trees 49 and 50).

OBSERVATIONS AND DISCUSSION

The site has three primary concerns with regard to privacy and building mass: **first**, the proposed work on the neighbor's property closest to your house could conceivably create a new line of sight from the open cabana into bedrooms and other upstairs areas in your house; **second**, the neighbor's property contains several trees and a row of hedges (trees #51-62) that provide important screening between the 801 property and your property which might be adversely affected by construction, reducing their contribution to screening as described in the Staff Report; **third**; the ingress/egress for construction in the back yard is shown going across a large pool without adequate explanation for the feasibility of moving heavy equipment, materials, or debris across it or around it. There is particular concern for avoiding damage to the Fern pine hedge (#51-60) and the Ash trees #49 and 50 (which appear to be shared trees) with protected root zones extending past the property line.

Addressing the **first** issue, the only current screening between the two nearest points of the properties is a mature flowering hibiscus hedge which you desire to keep. The hibiscus cannot grow tall enough to screen the new structure. Secondarily, the current dimensions of the planter and driveway configuration on your property preclude the installation of a larger hedge or other screening foliage. I suggest requesting the installation of a screening hedge in the side yard of the neighbor's property between the two buildings. The proposed screening foliage should be adequate to cover from the southeast corner of AS #3 to the driveway gate (at least a 30-foot length) and extend above the 12'9" proposed height for the back wall of AS #3. The installation should consist of a permanent planting (installed in-ground with irrigation) of screening hedge material which does not pose a risk to your property's hardscape.

Turning to the **second** issue, our office was not provided the arborist report for the neighbor's property. The tree inventory table in the provided plan from the hearing package indicates no tree removals, but it does not describe the extent of impacts to either canopies or roots of the trees on your property which could be affected by construction activities. Summarily from the plans, the screening hedge (#51-62) does not have any protective fencing indicated. Trees #OP48, #49 and 50 also do not have any protective fencing shown on the plans.

Finally, addressing the **third** issue, the current strategy for ingress and egress as depicted on the plans contemplates sending heavy equipment across an 18 by 44-foot pool, presumably via a large ramp. If contractors are unable to cross the pool with adequate safety and stability, the equipment would need to cross to the east (near trees OP28-33) or to the west (near trees 45-62) which may cause compaction damage to the roots and may require clearance pruning for equipment to pass.