

CHATTEN-BROWN & ASSOCIATES

TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

3250 OCEAN PARK BOULEVARD
SUITE 300
SANTA MONICA, CALIFORNIA 90405
www.cbaearthlaw.com

E-MAIL:
JCB@CBAEARTHLAW.COM

January 26, 2005

*By Facsimile and
By Hand Delivery*

City Planning Commission
200 North Spring Street Room 532
Los Angeles CA 90012

Re: Opposition to Zone Change and General Plan Amendment CPC-2004-4344-ZC-GPA (Agenda Item # 8), Site Plan Review CPC-2004-4345-SPP-SPR-1A (Agenda Item # 9), and Tract Map No. 61672-1A (Agenda Item #10) for Canyon Hills Project; Opposition to Certification of Draft Environmental Impact Report ENV-2002-2481-EIR, SCH No. 2002091018, October 2003

Honorable Commissioners:

On behalf of the Foothill Area League of Conservation Organizations and Neighbors (FALCON), we oppose approval of the general plan amendment, zone change, tract map, site plan review and certification of the Draft Environmental Impact Report ("EIR") for the Canyon Hills Project proposed by Whitebird, Inc. on La Tuna Canyon Road. We ask that the Commission grant FALCON's appeals of the approval of a tentative tract map and site plan review. We also ask that the Commission instruct staff to augment the information contained in the environmental impact report and circulate it to the public and public agencies for further review and comment.

The project is proposed entirely within the Verdugo Mountains Significant Ecological Area ("SEA"), which is unique for its breathtaking scenic vistas of mountains, ravines, rock outcroppings, and natural beauty. Whitebird, Inc. proposed a massive residential development project ("the Project") that included 280 units and requires at least 4.5 million cubic yards of grading and affects over 240.2 acres of land. On January 4, 2005, the Deputy Advisory Agency approved a modified project that would create 175 single-family lots, but would require more extensive grading and affect more than 450 acres of land. The general plan amendment and zone change proposed in the staff report

for agenda item #8 would allow a 230-lot project. The Deputy Advisory Agency's decisions should be reversed and the staff's general plan recommendation should not be approved since both violate the Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Community Plan ("Community Plan") and the San Gabriel/ Verdugo Mountains Scenic Preservation Specific Plan ("Specific Plan"); create extensive adverse but avoidable environmental impacts; and violate the Slope Density ordinance. Even if a development project is eventually approved, it must be on the basis of an Environmental Impact Report that complies with the requirements of the California Environmental Quality Act ("CEQA") in both its content and its review process. To this point, the EIR is deficient so neither the public nor reviewing agencies have been provided sufficient information as explained below and in our December 29, 2003 letter commenting on the draft EIR.

Our earlier comments identified a number of deficiencies in the DEIR and urged preparation and circulation of a revised Draft EIR. The environmental analysis is especially inadequate with regard to air quality impacts during construction; construction noise; impacts from artificial light; and scenic vistas, scenic resources and visual character impacts; and impacts on coast live oak trees. For these impact areas, the DEIR recognizes significant impacts will occur that will not be mitigated, but fails to explore the significance of those impacts, develop a full range of effective mitigation measures, and analyze alternatives to avoid the impacts, as it must.

Specifically, one alternative that has not been explored is clustering development, while at the same time preserving the general plan and zoning designations of the site. Although Alternative D in the DEIR analyzed a reduced density, 87 lot alternative, it did not analyze the clustering of those lots to avoid the impacts of distributing them throughout the entire 887-acre site. Although the general plan amendment and zone change recommended for approval by staff provide for clustering, they do not contemplate a proposal for as few as 175 lots, as the Deputy Advisory Agency approved. Clustering of development and limitation to a reasonable number of lots is possible and must be explored in the EIR.

A. The Deputy Advisory Agency's Approval Should be Reversed With

Instructions to Comply with CEQA and the Slope Density Ordinance.

1. The Environmental Impacts of the Approved Tract Map Must Be Disclosed in the EIR and the EIR Must be Recirculated.

The Deputy Advisory Agency approved a 175 lot version of the project that distributed development throughout the entire site as alternative D in the DEIR did, but doubled the density in comparison with that 87-lot alternative. Therefore, the environmental impacts of this 175-lot version of the project must be fully disclosed in the Draft EIR and the EIR must be recirculated for public and public agency review and comment.

Public Resources Code section 21092.1 requires recirculation of the EIR because of the doubling of density compared to Alternative D, which the Advisory Agency states is similar to the approved project. "When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 [Public notification prior to final decision] and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Section 21104 and 21153 before certifying the environmental impact report."

The doubling of the impacts that were analyzed in alternative D's 87-lot version of the project, especially doubling the intensity of significant impacts, is precisely the type of "significant new information" which requires recirculation of an EIR for public review and comment before EIR certification. The following are examples of where the doubling of impacts creates significant new information which requires re-notification of the public and public agencies regarding the impacts of the project.

Aesthetics. The EIR states "Alternative D would . . . substantially degrade the existing visual character and quality of the project site and its surroundings." (DEIR, p. VI-60). There is no mitigation that reduces aesthetic impacts below a level of significance. Therefore, this adverse negative impact of the approved tract map could be expected to be twice as bad as was disclosed in the EIR's analysis of Alternative D. Such a doubling of a significant impact is significant new information that requires recirculation of the EIR.

Geology and Soils. Regarding Geology and Soils, the DEIR stated "impacts from geology and soils under Alternative D would be similar to the proposed project.

However, because of its reduced density, fewer people and structures would be exposed to geotechnical hazards under Alternative D than under the proposed project.” (DEIR VI-46.) Since the approved tract map doubles the density of Alternative D, the exposure of more people and structures to potential landslides than contemplated by the EIR must be analyzed. The recent storms and tragedy in the La Conchita landslide highlight the need for proper analysis before approving houses in a location that could put future residents at risk.

Grading. The EIR reported that in alternative D, “building pads are constructed in isolation” so no “economies of grading would occur.” (DEIR, VI-43.) With building pads “constructed in isolation,” the grading and brush clearance impacts associated with Alternative D would double, with twice as many building pads constructed in isolation as was analyzed in the DEIR’s analysis of an 87-lot alternative. The DEIR stated “Alternative D would permanently disturb an area of approximately 450.02 acres” compared to the proposed project which would “disturb an area of approximately 304.77 acres.” (DEIR, VI-43.) Therefore, doubling the density of Alternative D might lead to grading and brush clearance of virtually the entire 887 acre parcel.

Biological Resources. Regarding biological resources, the DEIR reports “The impact [of Alternative D] to 8.66 acres of non-jurisdictional riparian areas under Alternative D substantially exceeds the impact to 2.32 acres of non-jurisdictional riparian areas under the proposed project.” (DEIR, VI-48). Therefore, the approved tract map, which doubles the impacts of Alternative D, can be expected to greatly increase impacts to riparian areas. The public and affected agencies such as CDFG are entitled by Public Resources Code section 21092.1 to re-notification about this significant new information.

Absent a showing of the necessity for their removal, the City’s Oak Tree Ordinance does not allow removal of the more than 232 oak trees proposed for removal by the project even if their loss were effectively mitigated. A permit for the trees’ removal may only be granted if their removal “their continued existence . . . prevents the reasonable development of the subject property” or the trees show a “substantial decline from a condition of normal health and vigor.” (Los Angeles Municipal Code section 46.02 (b).) The EIR’s analysis of alternatives that clustered development show it is feasible to develop the property without removing many of the oak tree destined for removal under the approved tract map. Because the EIR fails to demonstrate that it is infeasible to develop the property without removing the oak trees, a permit for their removal may not be granted.

Traffic. The Deputy Advisory Agency assumed traffic impacts would double, as compared with Alternative D, and admitted Alternative D's traffic impacts were significant on residential street segments north of Development Area A, but she did not detail the potential distribution of the doubling of this impact.

These examples should suffice to show that the approved tract map is sufficiently different from Alternative D, or any of the other alternatives in the EIR, that its' significant impacts have not been disclosed to the public in the EIR review process. The California Environmental Quality Act mandates such disclosure must occur.

2. The Slope Density Ordinance Prevents Approval of More Than 87 Lots.

The Deputy Advisory Agency incorrectly applied the slope density ordinance, Ordinance No. 162144, to the project to approve a tract map with 175 lots. This is inconsistent with the DEIR's statement that 87 large single family lots "is the maximum number of homes that can currently be developed on the project site under the current General Plan land use designations for the project site and the City's slope density ordinance (see Section 17.05C of the LAMC)." (DEIR, p. VI-42). This inconsistency between the EIR's statement and the Deputy Advisory Agency's approval is not explained, nor was the draft EIR's statement changed in the Final EIR. Therefore, we believe the EIR was correct that 87 lots is the maximum allowable.

As was detailed in the letter of Don Keene that was submitted with our appeal, and separately submitted by Don Keene, the slope density calculations performed to support the approved map are erroneous. These calculations were not explained in the EIR, as they should have been. The appeal staff report states the calculation was based "on a USGS topographic map with 40 foot contours." (Staff Report, p. 4.) However, use of 40 foot contours violates the City's Municipal Code. Under the Municipal Code, contour intervals are to be "at not greater than 25-foot intervals." The clear intent of this provision is that an insufficient level of detail of the analysis not introduce errors that would occur if intervals larger than 25 feet were used. The Municipal Code must be interpreted consistently with its clearly evident purposes. "The construction of a municipal initiative or ordinance is governed by the same rules as the construction of statutes." (*C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 929.) It is a settled principle of statutory instruction that the purpose of the statute controls its interpretation. (*California Teachers Assn. v. San Diego Community College District* (1981) 28 Cal.3d 692, 698-699.)

According to the staff report, interpolation to prepare topographic maps “is a common method and practice used by the surveying industry.” (Appeal Staff Report, p. 4.) However, the type of interpolation conducted here is not acceptable. As Mr. Keene’s letter attached to our appeal explains, even 200 foot intervals could be mathematically interpolated down to 40 foot intervals, but the interpolated intervals would be no more accurate than the 200 foot intervals. Mr. Eick, in the appeal of the Shadow Hills Property Owners Association, reported the USGS person with whom he spoke called the interpolation from less detail to more detail a “false accuracy.” Attached is a January 24, 2005 letter to Mr. Keene from the Board For Professional Engineers and Land Surveyors about this question. It states:

Mr. Brunner [the Board’s staff Land Surveyor Consultant] reviewed your letter and advised me that your concerns are appropriate. Mr. Brunner advised that *USGS Quadrangle maps should not be broken down to create sub contours from the contours on the maps. These maps are not accurate enough to be broken down. There is insufficient detail and accuracy to enable the maps to work at the smaller scale.* Mr. Brunner said that the local jurisdictions can allow these maps to be used but *they can only be used “as is” and for the purposes for which they were created.* Local developers, engineers, and/or surveyors should not be allowed to interpret or misinterpret the data on these maps for any other use.

(January 24, 2005 letter of Sally Stubinger, Enforcement Analyst, emphasis added.) This letter proves that the type of interpolation conducted here is neither accurate nor professionally acceptable.

Using the correct contour lines of 25 feet or less in the slope density calculation yields a maximum of 87 lots, and possibly less, allowable on the entire property, as was reported in the Draft EIR. (DEIR, p. VI-42). The City must abide by the 87-lot maximum stated by the DEIR. (DEIR, p. VI-42). Alternatively, the City must explain, in a manner reviewable by the public in the CEQA review process, its recalculation of slope density which appears to be based upon inaccurate information that is not in compliance with the slope density ordinance.

3. A Clustered, Reduced Density Alternative Must Be Analyzed to Provide a Reasonable Range of Alternatives.

The Advisory Agency rejected requests to analyze a clustered, reduced density alternative because current zoning and general plan designation would not allow it. (Finding No. 4.) The staff report regarding the appeal states “Under current regulations, slope density applies and there is no unambiguous provision for a clustered development on just a portion of the property. . .” There need not be any “unambiguous provision” in the community or specific plan specifically authorizing clustering in order for a reduced size, clustered alternative to be feasible and proper for analysis. Besides, the Community plan permits clustering within the limitations set forth in Footnote 7 of the Community Plan. Clustering could occur within the constraints of the current zoning and general plan designation.

B. The General Plan Amendment and Zone Change Are Unnecessary and They May Not Legally Be Approved Because Feasible Alternatives are Available.

The zone change and general plan amendment are unnecessary because the Deputy Advisory Agency approved a tentative tract map that does not require them. We believe the approval of the tract map was erroneous to the extent it allowed 175 lots rather than 87 or fewer permissible under a correct slope density calculation. However, the Advisory Agency’s decision was correct to the extent that it maintained the existing zoning and general plan designations.

On the present record, the City may not legally approve the zone change and general plan amendments using a statement of overriding considerations. Such a statement may only be adopted when there are no feasible alternatives to the proposed project. The fact that the Deputy Advisory Agency found a 175 lot configuration to be a feasible alternative version of the project without a zone change and general plan amendment means the City may not adopt a statement of overriding considerations to approve the zone change and general plan amendment. Public Resources Code section 21081 mandates that

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:

. . . (3) Specific economic, legal, social, technological, or other considerations . . . *make infeasible the mitigation measures or alternatives identified in the environmental impact report.*

(Public Resources Code section 21081, emphasis added.)

An alternative that clusters development in portions of the property to avoid ridgelines and sensitive habitat, yet maintains the general plan and zoning designations of the parcel is as feasible as the version of the project approved by the Deputy Advisory Agency and would be less damaging to the environment.

It is also feasible to completely deny the zone change and general plan amendment, as similar requests by the Duke Company were completely denied several years ago for an adjacent property. As we understand it, Duke would have built 45 homes and graded numerous ridges on their 55 acres, but their request was completely denied. The proposed zone change and general plan amendment here should be denied as well.

Since there are at least three feasible alternatives to the zone change and general plan amendment recommended in the staff report, section 21081 prevents the City from approving the zone change and general plan amendment.

Conclusion.

We request that the Commission grant the appeals of the site plan review and the tract map. Full information about the environmental impacts of the 175-lot approved tract map should be included in the EIR and the EIR recirculated for public and public agency comments. The general plan amendment and zone change must be denied altogether since there are feasible alternatives available which avoid their adverse environmental impacts. The fact that this Commission is considering an Interim Control Ordinance for an area that includes portions of the project site (Agenda Item #7) demands a reexamination of this project and the denial of changes to the general plan or zoning until additional analysis is completed.

It appears that a modification of the proposed project will allow Whitebird to develop its property in a way that adheres to the current general plan and zoning and avoids adverse environmental impacts to the greatest extent possible. In order to achieve that modification, additional information must be provided in the EIR review process so decision-makers and the public will have a document that fully informs them of the

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impacts, mitigation measures, and alternatives. Only in this way can the EIR protect the environment and demonstrate to the public that it is being protected.

Thank you for your consideration.

Sincerely,

Douglas P. Carstens

Enclosure

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