

CITY OF LOS ANGELES  
PLANNING DEPARTMENT

MASTER APPEAL FORM

APPEAL TO THE: City Council

REGARDING CASE NO.: VTT No. 53072-1A  
ENV-1999-3251-EIR

This application is to be used for any authorized appeals of discretionary actions administered by the Planning Department. Appeals must be delivered in person with the following information filled out and be in accordance with the Municipal Code. **A copy of the action being appealed must be included. If the appellant is the original applicant, a copy of the receipt must also be included.**

**APPELLANT INFORMATION: PLEASE PRINT CLEARLY**

Name Upper Mandeville Canyon Property Owners Assoc. and  
Canyon Back Alliance, a non-profit, public benefit corp.  
Mailing Address c/o Thomas R. Freeman, Bird Marella  
1875 Century Park East, 23rd Floor  
Los Angeles, CA 90061-2561  
Work Phone: (310) 201-2100 Home Phone: (310) [REDACTED]

- a) Are you or do you represent the original applicant?  
(Circle One) YES  NO
- b) Are you filing to support the original applicant's position?  
(Circle One) YES  NO
- c) Are you filing for yourself or on behalf of other parties, an organization or company?  
(Circle One) SELF  OTHER
- d) If "other" please state the name of the person(s), organization or company (print clearly or type)  
Upper Mandeville Canyon Property Owners Assoc.  
Canyon Back Alliance, Inc.

**REPRESENTATIVE**

Name (1) Thomas R. Freeman  
Mailing Address Bird Marella  
1875 Century Park East, 23rd Floor  
Los Angeles, CA Zip 90067-2561  
Work Phone: (310) 201-2100 Home Phone: (310) [REDACTED]  
(2) Robert Garcia, Esq., Exec. Dir. Center for Law in the Public Interest,  
1055 Wilshire Blvd., Suite 1660, Los Angeles, CA 90017-2499 (213) 977-1035

**APPEAL INFORMATION**

A complete copy of the decision letter is necessary to determine the final date to appeal, under what authorizing legislation, and what, if any, additional materials are needed to file the appeal.

**Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the orally stated determination of the Commission at the Commission hearing. Do not wait for the decision letter to appeal.**

Final Date to Appeal: October 31, 2005

**REASONS FOR APPEALING**

Are you appealing the entire decision or parts of it?

Entire       Part

Indicate: 1) How you are aggrieved by the decision; and 2) Why do you believe the decision-maker erred or abused their discretion? If you are not appealing the whole determination, please explain and specifically identify which part of the determination you are appealing.

Attach additional sheets if necessary. Appellants Upper Mandeville Canyon Property Owners Association ("UMCA") represent members who reside in the vicinity of the project. Appellant Canyon Back Alliance, a non-profit public benefit corporation ("CBA") is dedicated to the protection of public access to recreational trails in the Santa Monica Mountains. Appellants are adversely impacted by the project and the failure to properly analyze these adverse impacts in the draft and final EIRs and the CPC ruling on Appellants' appeal, as specified in the letters and exhibits filed by Appellants and others, which are hereby incorporated by reference as set forth in full. [Continued on Page 3.]

**ADDITIONAL INFORMATION**

- original applicants must pay mailing fees to BTC and submit copy of receipt. (BTC not required for Building and Safety Appeals)
- any additional information or materials required for filing an appeal must be provided in accordance with the LAMC regulations as specified in the original determination letter. **Copy of determination/decision letter is required.**
- acceptance of a complete and timely appeal is based upon successful completion and examination of all the required information.
- seven copies and the original appeal are required.

I certify that the statements contained in this application are complete and true:

Appellant Tom D

**OFFICIAL USE ONLY**

Receipt No. \_\_\_\_\_ Amount \_\_\_\_\_ Date \_\_\_\_\_

(\$71 if filed by aggrieved party)

Application Received By \_\_\_\_\_

Application Deemed Complete \_\_\_\_\_

Copies provided:       Determination       Receipt (original applicant only)

Determination Authority Notified (if necessary)

**THE PLANNING COMMISSION HAS DEGRADED PUBLIC ACCESS TO  
RECREATIONAL MOUNTAIN TRAILS IN VIOLATION OF CEQA.**

Developer Castle & Cooke took a calculated risk when it circulated its EIR for public comment. The developer decided to ignore the project's significant adverse impact on the public's long-established recreational use of trails in the Santa Monica Mountains. The developer's cynical motivation is easy to discern – push the project through before anybody notices that it degrades public access to recreational trails.

In this case, Castle & Cooke manipulated the EIR process by devoting not a word of its Draft EIR to the project's significant adverse impact on the Canyonback Trail or the Mt. St. Mary's Trail. And when public commentators noticed that the project's proposed extension of Canyonback Road as a private and gated street would threaten open and unrestricted public access on Canyonback Trail, the (inadequate) response in the Final EIR was simply to *defer* analysis of that impact until after Tract Map approval – when it would be too late to design the project's street and houses in a way that could protect the quality of public recreational access.

The project's impact on the Mt. St. Mary's ("MSM") Trail was even more camouflaged. The MSM trail was not mentioned in the Draft or Final EIRs. As a result, the public did not realize that the project would terminate public access on the MSM Trail until after the public hearing before the Deputy Advisory Agency. It was only after that hearing that it became clear that the developer planned to lock and gate the back-end of its Stoney Hill project site in order to terminate public access on the MSM Trail.

This failure to describe the project's significant, adverse recreational impacts in the EIR, or analyze ways mitigate such adverse impacts, violates the core purpose of CEQA. The EIR is "the heart of CEQA." It must analyze the project's potentially significant adverse environmental effects, including a project's potential impairment of recreational uses. Significantly, state policy under CEQA is to "take all action necessary to provide the people of this state with . . . enjoyment of *aesthetic, natural, scenic*, and historic environmental qualities."<sup>1</sup> Aesthetic, natural and recreational issues must be assessed in an EIR whenever a project is likely to significantly degrade an area's recreational uses.<sup>2</sup> This is consistent with the City's own policy, as reflected in the Brentwood-Pacific Palisades Community Plan, Goal/Objective 4.

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<sup>1</sup> *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 936-937 (2004), quoting Pub. Res. Code § 21001(b).

<sup>2</sup> *Pocket Protectors*, 124 Cal. App. 4th at 937 (citing cases); *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1417 (1995).

The EIR process is designed to assure public disclosure and involvement whenever state or local government action threatens to degrade recreational resources. The EIR is an “environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they reach the ecological point of no return.”<sup>3</sup> The EIR protects representational democracy by demonstrating “to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological [including recreational] implications of its action.”<sup>4</sup> And, because the EIR must be certified or rejected by public officials, it is “a document of public accountability.”<sup>5</sup> “If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.” Consequently, the “EIR process protects not only the environment but also informed self-government.”<sup>6</sup>

In violation of CEQA’s essential purpose, the Draft and Final EIRs fail to analyze the project’s adverse recreational impacts and ways to eliminate or minimize them.<sup>7</sup> Instead, the public access impacts were effectively swept under the rug, while the Commission’s Tract Map and project approvals set in stone development plans that could otherwise have been altered to avoid or mitigate (1) the degradation of Canyonback Trail and (2) the termination of public access on the MSM Trail.<sup>8</sup>

This is not the first time that Castle & Cooke has attempted to circumvent the public EIR process by (1) ignoring significant environmental impacts and (2) moving forward with the planning process as expeditiously as possible before the public has an opportunity to take effective action, knowing that the quicker that the planning process proceeds, the less likely the lead agency will take remedial action to protect environmental interests and the integrity of the CEQA process. Castle & Cooke employed the same cynical technique in *Bakersfield Citizens For Local Control v. City of Bakersfield; Castle & Cooke Commercial-CA, Inc.*, 124 Cal. App. 4th 1184 (2004). But the Court of Appeal in that case properly recognized that Castle & Cooke’s *full-steam-ahead strategy* was undertaken at its own risk, with knowledge that the challenge to its inadequate EIR may cause it to start the process anew. *Id.* at 1202-1204.

The City of Los Angeles must likewise protect the integrity of the EIR process by requiring that Castle & Cooke return to the EIR process and submit a Supplemental EIR

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<sup>3</sup> *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392 (1988).

<sup>4</sup> *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 86 (1974); Guidelines § 15003(d).

<sup>5</sup> *Laurel Heights*, 47 Cal. 3d at 392.

<sup>6</sup> *Laurel Heights*, 47 Cal. 3d at 392.

<sup>7</sup> *Santa Clarita Org. for Planning the Environment v. County of Los Angeles*, 106 Cal. App. 4th 715, 723 (2003).

<sup>8</sup> *Bozung v. Local Agency Formation Comm.*, 13 Cal. 3d 263, 282 (1975).

*before* its Tract Map is approved. Otherwise, the Tract Map will eliminate options for mitigating the project's significant degradation of public access on the Canyonback Trail and its termination of public access on the MSM Trail.

**[1] The Planning Commission Allowed The Developer To Degrade The Quality Of Public Access On Canyonback Trail Without Adequate EIR Description Or Mitigation Analysis.** The Planning Commission purported to protect the public's right of access on Canyonback Trail by imposing on the developer Condition 93. Condition 93, as approved by the Planning Commission, provides for a minimum 10-foot wide public easement, open to the public at all times, which must be separate and apart from the development's private/gated street and adjoining sidewalk. Condition 93, however, allows the developer to degrade public access on Canyonback Trail in two respects.

First, the trail alignment through the development site has never been specified. No maps have been disclosed to the public making clear where the trail will be located. This lack of specificity provides the developer an opportunity to degrade the quality of the trail's historic, scenic ridgeline alignment. The failure to identify the precise trail alignment also raises the risk that the trail entrance will be located so close to the proposed (gated) private street as to inhibit public use of the public trail. Additionally, the absence of any map specifying the trail alignment creates a grave risk that the "trail" will become a virtual sidewalk within the private community, further degrading the quality of the public trail.

Second, the Planning Commission modified the Deputy Advisory Agency's recommended Condition 93<sup>9</sup> by allowing the developer to constrict the trail's usable space to just 5 feet wide at critical portions of the trail where doing so will create safety risks for trail users along steep sections of the trail. This constriction is dangerous because cyclists must "serpentine" up the incline and coast rapidly down the hill, enhancing the risk of injury to all, especially children, handicapped, dog walkers, and elderly trail users. Paul Edelman of the Santa Monica Mountains Conservancy, who has obvious expertise in such matters, testified at the October 20, 2005, that a 5-foot trail would be inadequate for recreational use.

The Planning Commission, however, conducted a hearing by ambush without any supporting mitigation analysis in the EIR. The developer walked into the October 20, 2005 hearing with a new trail alignment proposal that had never before been disclosed to the public. Planning Commission President David Burg proceeded to negotiate the details – to the public's detriment -- after the close of public comment. This is the type of *ad hoc* bargaining of public rights that CEQA prohibits for just this reason. Public access cannot properly be impaired under CEQA simply because the developer says it must. A thorough mitigation analysis in the EIR is required to assure that such decisions are informed by adequate analysis and not the mere say so of interested parties.

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<sup>9</sup> The Deputy Advisory Report's recommendation was supported by Council District 11, the Santa Monica Mountains Conservancy, and all members of the public who addressed the issue at the October 20, 2005 hearing.

The Planning Commission's degradation of public access on Canyonback Trail violates CEQA because none of these public access degradations were subject to EIR description, much less were they subject to EIR mitigation analysis. *See April 7, 2005 letter from T. Freeman and R. Garcia to S. Chang and J. Liao, pp. 18-50; May 17, 2005 letter from T. Freeman and R. Garcia to S. Chang and J. Liao, pp.4-8; June 17, 2005 letter from T. Freeman to S. Chang and J. Liao, pp. 1-7.*

**[2] The Planning Commission Allowed The Developer To Terminate Public Access On Mt. St. Mary's Trail Without Any EIR Description Or Mitigation Analysis.** The project's adverse impact on public recreational access to and use of the Mt. St. Mary's Fire Road ("MSM") Trail was completely ignored by the Planning Commission, the Deputy Advisory Agency and in the EIR – in violation of CEQA.

The uncontested evidence demonstrates that the MSM trail was being used by the public during the EIR preparation and has been used by the public for recreational, aesthetic and educational purposes since at least the 1950s, including regular use of the trail for classes and extracurricular activities at Mt. St. Mary's College, including biology field study and wild flower viewing. Yet the EIR did not even mention the project's significant adverse impact on this public use of the trail, much less did it analyze ways to mitigate the substantial adverse impact. The record evidence of public use was likewise ignored by the Planning Commission, in violation of CEQA. *See May 17, 2005 letter from T. Freeman and R. Garcia to S., Chang and J. Liao, pp. 8-10; June 17, 2005 letter from T. Freeman to S. Chang and J. Liao; October 19, 2005, letter from T. Freeman to S. Chang and J. Liao.*

**[3] The Planning Commission Denied The Appeal Without Reviewing Appellants' Record Evidence, In Violation Of Appellants' Due Process Rights.** The Planning Commission's failure to review the record supporting Appellants' appeal was evidenced at the public hearing on October 20, 2005. Appellants contended that the project's adverse impact on public recreational use of the MSM Trail should have been described in the EIR and subjected to mitigation analysis.

The public had long enjoyed open access between the Canyonback and MSM trails. Public access, however, was impaired but not terminated when gates were installed on Stoney Hill Road in Mountaingate, in the area that had historically provided through-access between the two trails. Trail users were still using Stoney Hill Road to connect between the Canyonback and MSM trails, but were occasionally required to traverse the fence at the southern terminus of Stoney Hill Road to do so. Appellants were concerned that the Planning Department and Planning Commission would assume that, at the time the EIR was prepared, there was no existing public access between these trails because of the Stoney Hill Gates. To prevent any such implication, Appellants submitted to the Department a letter on July 17, 2005, explaining and providing evidence establishing that Stoney Hill Road is a "public street." This record evidence was not rebutted. Gates blocking access to public streets are illegal. *Citizens Against Gated Enclaves v. Whitley Heights*, 23 Cal. App. 4th 812, 818 (1994). (See Exhibit 142; June 17, 2005 letter from T. Freeman to S. Chang and J. Liao.)

The Planning Commission, however, failed to review Appellants' July 17, 2005 letter, as evidenced by the following colloquy during the October 20, 2005 public hearing, where Commission President David Burg publicly chastised Wendy-Sue Rosen, President of the UMCA and member of the Canyon Back Alliance, for *correctly* stating that Stoney Hill Road is a "public street":

**ROSEN:** I'd also like to just read a statement right out of the planning report. And it says, "the areas proposed for open space have been conditioned, consistent with vesting tentative Tract Number 53072, to be free of structures and buildings and be natural in character while functioning as an area for recreation and educational opportunities which includes maintaining equestrian/hiking trails depicted on the community plan," etc. And then it says, "As part of the project, approximately 424 acres of the project site will be set aside as permanent open space for use in the greater scheme of trails and recreational resources within the area of the Santa Monica Mountains." Whenever public – the open space areas that are going to be dedicated are mentioned, they're mentioned with regard to being part of the Santa Monica Mountains trail system. These huge parcels of open space are landslide and methane. The only way to get out of these parcels the personal public benefit that the report requests is to have trails and this trail is completely consistent – the Mt. St. Mary's Trail -- with what the community plan says. It says that the purpose for "all major parks and open space areas should ultimately be connected with the Mulholland Scenic Parkway System, with trails provided wherever possible." Not only is it possible here, the trail already exists and the plan and it's completely consistent with what the plan is asking for. And then it says, again recreational and education purposes, [which is] completely consistent with the Brentwood Pacific Palisades Community Plan. And so the dedication of this open space requires that it become part of the trail system and be used for public purposes and it is completely consistent with the community plan and so it is actually, I believe, a planning issue that this body could, should and may take up. And I would then ask that some kind of recognition of this trail be adopted and some kind of access or easement for its use. Thank you.

**BURG:** Thank you very much. Do you know – I just have to respond to some of these comments because I think some of them are so over the top. It's just – they require response from at least this Commissioner. First of all, there is no access to the Mount St. Mary's Trail from the north to the south. There is none. There's a guard station that is gated and there's a length of private road, a private property. There is no access from Mountaingate to this fire trail.

None. And so to come in here and say that there is currently access is just inconsistent with the record. There is access apparently from the south to the north that is unaffected by this. And you're talking about a short stretch. Now how, in terms of the Canyonback Trail that you're concerned about....

**ROSEN:** Could I respond?

**BURG:** No.

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**ROSEN:** But can I answer your first part. There are two things. I don't think that we're saying that there is access. I think what we're saying is there is a trail and the trail exists and that trail is consistent. The gate issue is completely separate and what I would argue and the City Attorney has met with us and agreed that the gates on the Stoney Hill Ridge side are illegal. That's a public street. Public streets are not permitted to be gated. That is....

**BURG:** It's not a public street.

**ROSEN:** It is a public street.

**BURG:** No, that street is not a public street.

**ROSEN:** Well, we could look in the record but we have met with the City Attorney and the City Attorney, Peter Gutierrez, has [interrupted by laughter from Planning Department Staff and Planning Commissioners]. It seriously is public.

**BURG:** I think it's really important to maintain your credibility that you --that when you come in front of this Commission and you testify, that you testify accurately. That's not accurate information. Okay.

**ROSEN:** If I were to submit to you something to prove that?

**BURG:** Then I will send you a letter of apology.

As Commissioner Burg would have known *had he reviewed the record supporting the appeal*, Stoney Hill Road is a public street. This fact is confirmed by the City's response to Appellants' May 19, 2005 Public Records Act Request, seeking all documents concerning the status of Stoney Hill Road. It reveals that Stoney Hill Road is a dedicated public street that has never been vacated. (*Exhibits 130, 131, 142.*) In fact, the Final EIR expressly states at Response 11.7 that Stoney Hill Road is a public street. Appellants' Exhibit 37 likewise indicates that Stoney Hill Road is public. This November 2, 2004 e-mail from a former CD-11 Planning Deputy to former City Councilperson Cindy Miscikowski states that "the new Mountaingate subdivision continues to inch forward. Jeff Ray from Psomas [the Project Engineer] recently met with Louise and Ernie Frankel [from the homeowners association representing those residing in the Stoney Hill Enclave] to update them on the DEIR which should be out soon (again, soon). Ernie is making a hard sell to include the privatization of Stoney Hill Road on the proposed tract map."

These records make clear that Stoney Hill Road is a dedicated public street. And, as stated by Ms. Rosen, the City Attorney's Office confirmed this fact during a meeting prior to the October 20, 2005 hearing. The *Planning Department* knew of this fact as well, but its staff

declined to advise the Planning Commission during the hearing that Commissioner Burg's diatribe was unjustified.

The Commission's failure to review the argument and evidence supporting the appeal, as evidenced above, violated Appellants' due process rights.

**[4] The Planning Commission's Failure To Protect Public Access Violates Civil Rights.** The Planning Commission's failure to protect public access to trails in the Santa Monica Mountains by impairing the quality of public access on the Canyonback Trail and gating-off public access to the MSM Trail raises serious civil rights concerns. Specifically, the Commission's action implicates rights protected under California Government Code section 11135, Title VI of the Civil Rights Act of 1964, equal protection under the Constitutions of the United States and the State of California, protections for freedom of expression, association, and assembly under the Constitutions of the United States and the State of California, related federal and state civil rights protections, the public trust doctrine, and other relevant laws. See, e.g., Robert García et al., *Dreams of Fields* 21-27.

**[5] The Commission Failed To Require A Funding Source To Maintain The Open Space Property.** Contrary to the Planning Commission's apparent assumption, the developer's plan to build just 29 homes and offer 400-plus acres as Open Space was not motivated by altruism. The applicable hillside slope-density requirements limit the developer to building no more than 29 homes. The remaining 400-plus acres are not developable. In order to obtain certain tax benefits, the developer has sought to dedicate the Open Space property to a public agency. However, no public agency has accepted the developer's offer because the land imposes substantial maintenance costs – including brush-clearance responsibilities, hillside-maintenance costs, flood-revetment clearing, and other forms of erosion control.

The Planning Commission failed to assure that, before the project is developed, a stable funding source is established for the Open Space property. Instead, maintenance responsibility will remain with developer "Castle & Cooke Mountaingate, Inc.," an entity that will likely not exist upon completion of this final phase of the Mountaingate development project. The cost of maintenance will thereby be passed onto the public as a perpetual liability. This is a significant adverse impact on the public, which subjects neighboring communities including the Mandeville Canyon and Mountaingate communities, to the risk of fire and stability harm. A Supplemental EIR must address this issue. See *June 17, 2005 letter from T. Freeman to S. Chang and J. Liao*,<sup>10</sup> *June 16, 2005 letter to Planning Department from Heal the Bay*.

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<sup>10</sup> Two letters were filed by T. Freeman on June 17, 2005, one letter on behalf of CBA and UMCA, the other filed only on behalf of UMCA. The letter referenced here is to that filed only on behalf of UMCA only.

**[6] The Commission Failed To Protect The Public By Granting A Conservation Easement To The Santa Monica Mountains Conservancy.** Appellants join in the objections raised by the Santa Monica Mountains Conservancy and Council District 11 at the October 20, 2005 public hearing. The Conservancy (or some other appropriate public agency) should be granted a conservation easement to protect the Open Space land. *See also July 17, 2005, letter from T. Freeman on behalf of UMCA.*

**[7] The Commission Failed To Protect Against Environmental Degradation.** Appellants join in the objections made by Council District 11 at the October 20, 2005 public hearing and Heal the Bay in its June 16, 2005 letter.

*The violations described above and in the incorporated letters require the preparation and public circulation of a Supplemental EIR.*