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April 15, 2005

**BY HAND DELIVERY**

Rockard J. Delgadillo  
City of Los Angeles, City Attorney  
200 North Main Street, Suite 800  
Los Angeles, CA 90012

**Re: Remove Canyonback Gate Now**

Dear Mr. Delgadillo:

This letter is in response to the April 8, 2005, letter from Assistant City Attorney Christy Numano-Hiura to Nelson Brestoff, counsel for the Crown Homeowners Association.

The April 8th letter reflects an imprudent change in the City Attorney Office’s position on the Canyonback Gate to which we object on behalf of members of the Canyon Back Alliance, a concerned citizens’ coalition established last year, and the Upper Mandeville Canyon Property Owners’ Association (“UMCA”).<sup>1</sup> Nothing significant has changed since your Office terminated construction of the Canyonback Gate on August 23, 2004, and denied the request to complete the Gate structure on October 27, 2004. No new or amended permit should be issued.

In July 2004, the City of Los Angeles issued a revocable permit authorizing the Crown Homeowners Association (“Crown HOA”) to construct a gate that would restrict public access on Canyonback Road.<sup>2</sup> Canyonback Road is both an access

<sup>1</sup> The UMCA is a voluntary (non-CC&R) homeowners’ association that has consistently fought to protect Open Space in the Santa Monica Mountains and recently supported the successful effort to create a Benefit Assessment District to fund the Mountains Recreation and Conservation Authority’s acquisition and maintenance of Open Space and public parkland in the Santa Monica Mountains.

<sup>2</sup> Exh. 11.

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point to and a portion of a public parkland trail within the Westridge-Canyon Back Wilderness Park.<sup>3</sup> The Canyon Back Alliance was formed in opposition to the Canyonback Gate and, on July 23, 2004 and August 4, 2004, we asked that you terminate construction of the illegal Gate immediately.<sup>4</sup>

The plan to privatize and gate the Canyonback Trail/Road generated widespread public opposition. On August 3, 2004, the Los Angeles Times Editorial, titled “Gates Make Bad Neighbors,” criticized Councilwoman Cindy Miscikowski’s support for this Gate:

*“Here’s an easy civics lesson: A private homeowners association wants to gate off a public street used by many to get to a public park. It needs city permission to do so. What should city leaders say?”*

*The obvious answer is: No way. So what on earth was the Los Angeles City Council thinking when it voted 13 to 0 last year to let the Crown Homeowners Assn., representing owners of 71 townhouses, go ahead with plans to close off Canyonback Road in upper Brentwood? About votes and campaign contributions from well-heeled constituents, apparently. Certainly not about the hundreds of joggers, hikers and dog walkers who don’t live on the ridge top and use the street from one dirt fire road to another and to the 20,000-acre Santa Monica Mountains paradise known as the Big Wild.”<sup>5</sup>*

Letters opposing the City’s plan to restrict public access were sent by State Attorney General Bill Lockyer, Mike Chrisman, California Secretary for Resources, the Santa Monica Mountains Conservancy, State Senator Sheila Kuehl, State Assemblyman Paul Koretz, numerous community groups and organizations, and over 175 individuals.<sup>6</sup>

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<sup>3</sup> Exh. 1 (photographs depicting area); Exh. 2 (trail map); Exh. 6 (Westridge-Canyon Back dedication); Exh. 9 (trail directions, map).

<sup>4</sup> Exh. 3 (July 23, 2004 letter); Exh. 4 (August 4, 2004 letter).

<sup>5</sup> Exh. 7 (LA Times, Aug. 3, 2004).

<sup>6</sup> Exhs. 8, 10, 20, 21, 22, 74, 75, 77, 78, 79, 101.

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On August 23, 2004, your Office stepped in to put a halt to the tremendously unpopular Canyonback Gate.<sup>7</sup> And when the Crown HOA asked your Office for permission to complete the Gate structure (except for hanging the gates), your Office properly denied the request.<sup>8</sup> But now, six months later, after the public has been lulled into believing that your Office would not permit any further work on the illegal Canyonback Gate, secret meetings between Council District 11 and the Crown HOA's professional lobbyist have led to a back-room deal and a dramatic reversal from your Office. After the deal was struck your Office promptly reversed itself by allowing the Crown HOA to complete the Canyonback Gate structure (without the gates).<sup>9</sup>

The behind-closed-doors negotiations between CD-11 and the Crown HOA is not a proper basis for your Office's new stance. Secret meetings were not what your Office's August 23, 2004, letter implied. The letter stated that your Office was "informed that Council District 11 is currently working with the community to find alternative solutions to address this issue." The supposed plan to work with the community to address public access was also promised by CD-11, but only while the news cameras were rolling and reporters were taking notes.<sup>10</sup> Since the heated Canyonback Gate battle was stayed by your August 23rd action, the general public has heard nothing more about the Canyonback Gate. None of the promised community discussions have occurred.

Your Office has now quietly decided to let the Canyonback Gate construction proceed. While the gates may not be installed yet, the electrical, landscaping and

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<sup>7</sup> Exh. 12.

<sup>8</sup> Exh. 102 (Oct. 27, 2004, letter from Assistant City Attorney denying Crown HOA's request to complete landscaping and lighting elements of Gate).

<sup>9</sup> Exh. 104 (April 8, 2005 letter).

<sup>10</sup> Exh. 48 (Los Angeles Daily Journal, Aug. 4, 2004) (CD-11 staff member states that "there are plans for additional meetings, possibly within two-to-three weeks"); Channel 7 Eyewitness News Report, July 29, 2004 (Reporter Sid García reports that Councilwoman Miscikowski advised that another community meeting would take place in August 2004 to address a possible alternative trail).

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aesthetic work may be completed. By allowing this work to proceed, the April 8, 2005 letter implies that it is just a matter of time before the gates are hung and locked. Why else would the City allow construction to proceed after the six month hiatus?

*The April 8 letter raises this question: What has changed between October 27, 2004 and April 8, 2005?*

The general public has no way of knowing *why* the City Attorney has changed course and no explanation is provided in the April 8 letter. But our recent Public Records Act requests have revealed that, although CD-11 has been too “busy” to meet with the trail users who opposed the Canyonback Gate,<sup>11</sup> the Crown HOA’s paid lobbyist, Gary Morris of GLM Assoc., has met privately with Councilwoman Miscikowski. Mr. Morris has apparently convinced her that the public access problem can be solved by cutting what he refers to as a “bypass” trail into the steep hillsides below Canyonback Road.<sup>12</sup> The bypass trail will allegedly avoid the public’s need to utilize Canyonback Road as part of the parkland trail. The plan hatched behind closed doors is to construct this bypass trail then vacate Canyonback Road.<sup>13</sup>

But the Crown HOA’s “bypass” trail is not a suitable or realistic alternative to Canyonback Road. The bypass trail would be graded along a hillside so steep that it would have to be supported by concrete retaining walls, supported by piles elevating the trail above ground. The piles would have to be sunk into bedrock for support. This project would cost millions of dollars, if it could be built. But it cannot be built because the entire bypass area is filled with the remains of landslides, some of which were measured as deep as 68-feet before the boring equipment failed.

The infeasibility of this bypass trail is clear from a comparison of Mr. Morris’ bypass-trail map (Exh. 67) with the geological map depicting the many landslides and slumps within the Mountaingate project area (Exh. 70), which was prepared by the Mountaingate developer’s geologists at Leighton and Associates. *Exhibit 105*

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<sup>11</sup> Exh. 50 (City e-mails indicating both that CD-11 will schedule a meeting at a later date and that Councilwoman is “very busy”).

<sup>12</sup> Exh. 55; Exh. 27.

<sup>13</sup> Exh. 27.

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combines these two maps by depicting the Crown's "bypass trail" on the geological map. This combination map strikingly reveals the inadequacy of the Crown's trail.

The "bypass" trail is simply and indisputably infeasible. Jeffrey Holt of Mountain Geology has submitted a report (Exhibit 17) establishing this fact. The lead Mountaingate geologist, Jose Sanchez of Leighton and Associates, took one look at the Crown's bypass trail map and came to the same conclusion. The trail is "infeasible," a conclusion that Mr. Sanchez said was "obvious." If you have any remaining doubts, you should consult the Department of Building & Safety's Engineering Geologist II, Dana Prevost, who has studied the geology in the area as part of the Mountaingate EIR process. He can easily confirm that the bypass trail is not feasible.

We ask that you, as the elected City Attorney for the entire City of Los Angeles, step in and assume responsibility to protect public access to public parkland. Now is the time to act. The Crown should be required to remove the Canyonback Gate structure from the public street immediately. The pillars now standing send a message that the Canyonback Trail is not for public recreational use. The structure inhibits public use of the parklands bought with public funds. This type of "fake" security structure<sup>14</sup> misleadingly implies that the Canyonback Trail is a "private enclave." It sends a foreboding "Do Not Enter" message that has no place on a public parkland trail.

## **A. The Secret Deal To Privatize And Gate Canyonback.**

### **1. The Crown HOA's plan to gate and privatize Canyonback Road.**

The Crown first began its efforts to gate Canyonback Road in 1995 after learning that a guarded security gate had been installed to block public access onto the streets of Brentwood Circle, where Cindy Miscikowski (then Chief of Staff for Councilman Marvin Braude) resides.<sup>15</sup> When the Crown's initial efforts failed, after

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<sup>14</sup> Exh. 16 (LA Times article on "faux" security structures).

<sup>15</sup> Exh. 28 ("The City Council recently approved a street vacation for a gate at Brentwood Circle. We need to act now while the 'climate' for street vacation is favorable!"; "Property values will increase 10%-20%"; "We are the only ungated (footnote continued)

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*hundreds* of City residents and trail users signed a petition opposing the privatization and gating of Canyonback,<sup>16</sup> the Crown HOA approached developer Castle & Cooke.

Castle & Cooke was then in the early planning stages of a new development in the Mountaingate area, which would include a development along the Canyonback Ridge beginning at the south end of existing Canyonback Road. When Castle & Cooke learned of the Crown's failure to gate Canyonback Road, it suggested that a gate be located on Mountaingate Drive, which would keep non-resident vehicles off Canyonback Road entirely, not just off the Crown's section north of Mountaingate Drive. The Crown HOA was "very excited" about Castle & Cooke's proposal to share this cost burden, which they believed would make the Crown's dream of a gate a reality. The prize in sight was not, however, security: "Crown property values stand to increase dramatically and problems resulting from careless pedestrians with their dogs will cease."<sup>17</sup>

But the plan to gate Mountaingate Road was quashed when prominent community activist Louise Frankel, President of the neighboring Mountainview Homeowners Association, opposed the gate and let Councilwoman Miscikowski know of her opposition. She argued that a gate on Mountaingate Drive would impose

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community in Mountaingate. Therefore all the sightseers, cruisers, and malingers come to our street. . . . Why not spend the money on a gate to avoid problems and, at the same time, increase the value of your property!"); Exh. 64 (LA Times article quoting Brentwood Circle resident on virtue of privatizing and gating: "This will keep out the riffraff.").

<sup>16</sup> Exh. 100 (Petition In Opposition To The Privatization Of Canyonback Road).

<sup>17</sup> Exh. 29, p. 2 (Draft Minutes, Crown HOA Annual Meeting, Dec. 14, 1999). The Crown focus on keeping dog walkers off the street/trail seems to be second only to the expected increase in property values in terms of rallying community support for privatization and gating. See e.g., Exh. 30 (Minutes, Crown HOA Meeting, Oct. 10, 2000, "the position of the Board is to privatize the street, post appropriate signs and hire security to keep uninvited strangers, dog walkers, and others off the street").

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a hardship on members of her HOA given their proximity to the proposed gate and their lack of need for a gate because their community was already gated.<sup>18</sup>

Louise Frankel is an influential supporter of Councilwoman Miscikowski. As former *Los Angeles Times* political columnist Bill Boyarsky reported in April 2004, “Frankel took credit for her precinct registering a high vote for Miscikowski, “and that’s because I walked door to door,’ she said.”<sup>19</sup> Significantly, however, Ms. Frankel tempered her position on her neighbors’ plan by emphasizing that her HOA “affirm[s] our support for a Crown Homeowners Association gate to be placed on Canyonback.”<sup>20</sup> Perhaps in an effort to mend fences after ripping down the would-be Mountaingate Gate, Ms. Frankel put her significant influence behind the Crown’s effort to privatize Canyonback Road.

The Crown informed Ms. Frankel and Castle & Cooke that its new plan was to privatize Canyonback Road and hire a full-time guard to patrol the street, “with authority to remove people who do not belong there.”<sup>21</sup> The privatization of Canyonback Road would not be sought in conjunction with a permit to construct a security gate, presumably because the prior attempt to gate the road failed. But it was clear that the Crown’s decision to seek privatization only was done in order to make gating easier. Privatization would be the Trojan Horse. The Crown’s plan was to privatize first, which would then allow the HOA to construct a gate on the private street without the City’s permission. A Trojan Horse plan depends on subtlety, a characteristic that failed the Crown on this occasion. The “draft” Minutes (subsequently revised to eliminate the outbreak of candor) make the HOA’s intent clear: “The [Crown] Board feels privatization of the street is a positive first step, and as soon as this is done they will take the next step towards having it gated.”<sup>22</sup>

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<sup>18</sup> Exh. 31 (May 31, 2000 letter from L. Frankel to C. Miscikowski).

<sup>19</sup> Exh. 32 (Bill Boyarsky, *Money Buys Control*, The Jewish Journal of Greater Los Angeles, April 4, 2004).

<sup>20</sup> Exh. 31 (letter, L. Frankel to C. Miscikowski, May 31, 2000).

<sup>21</sup> Exh. 33 (Aug. 24, 2000 letter from Gary Morris to Louise Frankel, Crown HOA representatives, and Ilene Miles, Castle & Cooke’s Project Manager).

<sup>22</sup> Exh. 34, p. 2, (Minutes, Crown HOA Bd. Of Dir. Meeting, September 12, 2000).

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## 2. A powerful contributor asked Miscikowski to support the gating effort.

Louise Frankel's involvement was a cause for concern among the Crown residents opposed to privatizing the street. Lionel Margolin, then a Crown member, attended the September 2000 Crown HOA Board meeting and reported as follows: "It was clear that there is a plan to pretend that privatization is unrelated to the gate as the President tried to limit discussion to this issue alone. However, there were a number of people present who expressed impatience about how long it was taking to put a gate in place. Most ominous was [Board member Sheila] Jacobs' statement that Louise Frankel, (the well connected political activist who killed placement of the gate on Mountaingate Drive) is going to contact Councilwoman Cindy Miscikowski, to speak to her in favor of privatizing Canyonback (Crown side only)."<sup>23</sup>

Dr. Margolin's concerns anticipate the Los Angeles Times' August 3, 2004 editorial: "So what on earth was the Los Angeles City Council thinking when it voted 13 to 0 last year to let the Crown Homeowners Assn., representing owners of 71 townhouses, go ahead with plans to close off Canyonback Road in upper Brentwood? *About votes and campaign contributions from well-beeled constituents*, apparently. Certainly not about the hundreds of joggers, hikers and dog walkers who don't live on the ridge top and use the street from one dirt fire road to another and to the 20,000-acre Santa Monica Mountains paradise known as the Big Wild."

A few months after it was announced that Ms. Frankel would contact the Councilwoman, a meeting was scheduled with Councilwoman Miscikowski and the Crown HOA's representatives, including its lobbyist, Gary Morris of GLM Associates.<sup>24</sup> Ms. Frankel's advocacy on behalf of the Crown's effort to privatize

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<sup>23</sup> Exh. 35 (Sept. 12, 2000, memo from L. Margolin to neighbors opposing gate).

<sup>24</sup> Exh. 36 (Jan. 11, 2001 fax memo to C. Miscikowski from Crown residents opposed to gate) (providing information to Miscikowski in anticipation of her meeting with HOA Members; "Although the proponents of the gate have stated that they understand they will need to allow a pass through for cyclists and hikers during the day, they also have made it clear that their purpose is to discourage as much as possible anyone from actually using Canyonback once it is privatized, gated and a guard is stationed at the gate.").

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Canyonback Road was consistent with her husband's push to privatize Stoney Hill Road as part of Castle & Cooke's project.<sup>25</sup> On January 23, 2001, presumably after Ms. Frankel's meeting with Councilwoman Miscikowski, Gary Morris met with the residents who opposed the HOA's efforts to privatize and gate the street. Morris informed them that Councilwoman Miscikowski's Office agreed to change the rules for vacating the road. Canyonback Road could be vacated by a mere super-majority vote of the HOA's membership instead of the previously-required unanimous approval.

**3. Councilwoman Miscikowski agreed to an unprecedented street-vacation policy in aid of privatizing Canyonback.**

The Crown was successful in its efforts to change the rules for vacating Canyonback Road. By June 2001, Councilwoman Miscikowski agreed to support the Crown's plan to proceed with the vacation process based not on a unanimous consent of the residents, but a mere 75% vote.<sup>26</sup> This change of rules required a change of the Crown's bylaws and, most dramatically, a change in the City's established practice.

Up until the Crown's application, the City's practice was to require unanimous support from *all* residents along the street before it would proceed with a street vacation request. The reasons for this practice were described to CD-11 staff by Edmond Yew, Bureau of Engineering, Manager, Land Development: "I just feel that if the City is taking away a public street access to someone's property, I want to make sure the City has all the consents from all property owners. . . . I just don't see the benefit from the City's point of view of requiring anything but 100% consent. . . . I don't want the City to set a precedent to take the position that a homeowners association can speak for all owners, knowing that there are dissensions among the members already."<sup>27</sup> This was apparently the first time the City had ever moved to

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<sup>25</sup> Exh. 37 (Nov. 2, 2004, e-mail from K. Keller to C. Miscikowski) ( "Ernie is making a hard sell to include the privatization of Stoney Hill Road on the proposed tract map.").

<sup>26</sup> Exh. 39 , p. 3 (Crown HOA Answers to Questions, June 14, 2001).

<sup>27</sup> Exh. 40 (e-mail message from E. Yew (Manager, Bur. Of Eng., Land Dev't) to J. Pietroski (CD-11, Ass't Planning Deputy), Jan. 21, 2004).

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privatize a street based on the HOA's authority to act for its members, including dissenting members.<sup>28</sup>

Despite Mr. Yew's objections and his acknowledged expertise, Councilwoman Miscikowski chose to break with established precedent and vacate Canyonback Road without the residents' unanimous approval.<sup>29</sup> In the January 2001 meeting between Councilwoman Miscikowski's Office and Gary Morris, Morris obtained the Office's approval for his plan to seek street vacation without the unanimous support of all Canyonback Road residents. This special dispensation marked a change from the requirement stated in the City Engineer's 1999 Report, which required that "consents to the vacation be secured from *all* property owners adjoining the area to be vacated."<sup>30</sup>

This was not the only irregularity in the Canyonback process. On March 26, 2003, the City Council's three-member Public Works Committee decided on a 2-0 vote to forward the HOA's request to privatize Canyonback Road to the full City Council. Yet two of the Committee's three members were absent. Councilmember Nick Pacheco was absent and Councilmember Tom LaBonge, who is reflected as the second "Yes" vote, was likewise absent. "I wasn't there. That meeting wasn't on my calendar."<sup>31</sup> Despite that irregularity, the gating proposal was *deemed* to have passed this requirement too.

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<sup>28</sup> Exh. 40 (e-mail message from E. Yew to J. Pietroski, dated Jan. 22, 2004).

<sup>29</sup> Exh. 41 (e-mail message from J. Pietroski to E. Yew, Jan. 23, 2004) ("in talking with the Councilwoman she explained that we already looked at this issue several years ago and the way these properties are owned, are unlike a regular Single Family Home, they are more like a condo Association, where the HOA does actually own the land... so thanks for your expertise and for now I think we are fine to move forward.").

<sup>30</sup> Exh. 38, p. 3 (Office of City Engineer Report, March 23, 1999) (emphasis added).

<sup>31</sup> Exh. 42 (Bob Pool, *Gate Issue Remains Open For Discussion*, Los Angeles Times, Metro Desk, p. 3 (April 28, 2003)).

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**4. There have never been any legitimate “security” concerns to justify privatizing/gating the public trail.**

The Crown’s Application for Street Vacation indicates that the purpose of the proposed vacation is security.<sup>32</sup> The Crown has never provided any data to support the notion that gating is needed for security purposes. And in August 2002, when LAPD Senior Lead Officer for the area Dennis Hinman spoke to the Crown’s Neighborhood Watch group, he informed the group that “Mountaingate is almost void of crime.” There were only four reported incidents from August 2001 to August 2003 and two or three of the incidents were questionable.<sup>33</sup>

On July 6, 2004, Gary Morris and Richard Zien, Chairman of the Crown’s Gate Committee, appeared at a Brentwood Community Council meeting. When questioned about the need for privatizing and gating the remote public street, Mr. Morris stated that a gate was needed to deter crime, specifying that “drug dealing,” arson and other types of felonious conduct have plagued the Crown community due to unrestricted public entry through Canyonback Road.

When the audience responded with audible skepticism, Mr. Zien candidly admitted that crime was *not* an issue for Crown residents. The real problem was traffic related. According to Mr. Zien, commuters taking Sepulveda Boulevard to the Valley mistake Mountaingate Drive as a short-cut to the Valley. These alleged would-be short-cut drivers must then make U-turns at the end of Canyonback Road. Mr. Zien, however, was not able to say why a simple “No Outlet” sign would not solve the problem.<sup>34</sup>

Mitchell Feinstein, a MOSMA Board Member, has verified that Mr. Morris’ claims about drug dealing, criminal trespass and arson on Canyonback Road have no basis in fact. MOSMA is responsible for the private security patrols in the Mountaingate area and, as a Board member, Mr. Feinstein is privy to information

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<sup>32</sup> Exh. 43 (Sept. 19, 1995, Application for Street Vacation).

<sup>33</sup> Exh. 44 (Neighborhood Watch Meeting, Aug., 3, 2002).

<sup>34</sup> Exh. 45, p. 2 (Canyon Echoes, Aug. 2004); Exh. 46, p. 4 (Statement of M. Feinstein, read during July 29, 2004 meeting at CD-11 Office).

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about the crime reports. “The facts and records do not support any such criminal activity. There are no police reports of any such incidents . . . there is no crime. No felony has ever been reported to the police.”<sup>35</sup>

We filed a Public Records Act request with the LAPD, seeking documents concerning crime reports for Canyonback Road.<sup>36</sup> The LAPD responded that state law precludes it from producing documents except for crime reports during the six months prior to the request. The LAPD received *no reports* of any crime occurring on Canyonback Road during that six month period.<sup>37</sup>

Finally, the Crown’s complaints about cut-through traffic have never been supported by any data, and is inherently incredible. First, DOT measured the street’s traffic flows at 24 vehicles during the peak morning hour and only about 20 vehicles during the evening peak hour.<sup>38</sup> And the road is abnormally wide – sixty feet across – because it was originally designed as a scenic highway providing access to a massive hillside development that was never built. By any standard, the Canyonback Road traffic data falls far short of a serious cut-through traffic problem.

The real motivation for privatizing and gating Canyonback Road has always been to increase property values. The HOA has consistently sold its members on the gating proposal based on the advice of real estate advisors who “have told us that with privatization closure and gating of our street, *all* of our property values will increase by a *minimum* of 10-15%.”<sup>39</sup>

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<sup>35</sup> Exh. 46 (M. Feinstein Statement, July 29, 2004, read during meeting at CD-11 Office).

<sup>36</sup> Exh. 65 (Public Records Act request).

<sup>37</sup> Exh. 66 (LAPD Response to Public Records Act request).

<sup>38</sup> Exh. 69, (draft Planning Department’s Staff Report, prepared to support the Crown’s application to downgrade Canyonback Road from Secondary Highway to Local Street, as a necessary pre-condition for street vacation.).

<sup>39</sup> Exh. 47, p. 1, (July 20, 1999 Crown HOA letter to members).

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The anticipated increase in property values cannot arise from any purported enhancement of security on Canyonback Road given the absence of any existing crime problem. (Security, however, is not a viable justification for community gating even in areas that have established crime problems because the empirical data fails to demonstrate a significant impact on crime.<sup>40</sup>) What the Canyonback Gate and other community gates are successful at doing is restricting access to those considered “different.” Property values rise due to the enhanced social and economic status conferred on community gatekeepers who have the power to let the “good” people in behind the gates, while keeping out “bad” people.<sup>41</sup> Gates make it easy to distinguish “good” from “bad” based solely on immutable racial or ethnic characteristics, thereby promoting discrimination. Community gating thereby raises concerns that City permitting of gated enclaves may enable the same type of insidious discrimination once promoted by judicial enforcement of racial covenants.<sup>42</sup>

**5. The City Attorney’s Office blocked the illegal privatization and gating of Canyonback, before your recent change of course.**

The City Attorney’s Office terminated the illegal gating of Canyonback Road in August 2004. In doing so, the Office recognized that “the Canyonback street vacation will not proceed as originally proposed due to the public access issue.” The project, however, was not completely terminated: The City Attorney’s Office has “been informed that the Council District Office 11 is currently working with the

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<sup>40</sup> Empirical data shows that the impact on crime ranges from “marginal” to non-existent. E.J. Blakely and M.G. Snyder, *Fortress America: Gated Communities in the United States*, pp. 67-69 (Brookings Inst., 1997).

<sup>41</sup> Blakely & Snyder, pp. 60-63 (describing “status,” “prestige” and the desire to build barriers against the poor or people of different races as motivating factors); see generally, Setha Low, *Behind the Gates: Life, Security, and the Pursuit of Happiness in Fortress America* 111-52 (2003).

<sup>42</sup> Prior to *Shelley v. Kraemer*, 334 U.S. 1 (1948), courts routinely enforced racially and ethnically restrictive covenants. *Barrows v. Jackson*, 112 Cal. App. 2d 534, 539-540 (1952). See e.g., *Burkhardt v. Lofton*, 63 Cal. App. 2d 230 (1944) (holding deed provisions restricting use of premises to persons of Caucasian race to be enforceable).

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community to find alternative solutions to address this issue.”<sup>43</sup> But it is now clear that while Council District 11 was working with the Crown community, no representative from Council District 11 was even communicating with the adversely impacted community of trail users.

**6. The Canyon Back Alliance expressed its concerns about the inadequacy and danger of realigning the trail in August 2004.**

Councilwoman Miscikowski sent an August 27, 2004 e-mail to “Concerned Residents” after the City Attorney shut down the gate construction. In her e-mail, the Councilwoman indicated that the Crown’s efforts to privatize and gate the trail may still be realized if an alternative trail could be constructed around existing Canyonback Road

The alternative trail option was raised at a July 29, 2004 meeting at Councilwoman Miscikowski’s Office, attended by proponents and opponents of the Canyonback Gate. Miscikowski promised to schedule another meeting in a few weeks to discuss whether an alternative trail would be feasible. Immediately after this meeting, Councilwoman Miscikowski, speaking to Sid García, an ABC Channel 7 Eyewitness News reporter, said that she was working with the community and another meeting would take place in August to address a possible alternative trail. This promise to conduct a meeting with Gate proponents and opponents was reaffirmed by Kevin Keller a week later, as reported in the Daily Journal: “Last week, Miscikowski held a private meeting in her office Thursday to try to come up with a compromise. The meeting was unsuccessful, Keller said. ‘We didn’t get everything settled in one meeting,’ Keller said. Keller said that there are plans for additional meetings, possibly within two-to-three weeks. . . . The council wants to see access between sunrise and sunset, the manner is how that’s achieved . . . that’s what’s being discussed.”<sup>44</sup>

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<sup>43</sup> Exh. 12 (Letter from Christy Numano-Hiura, City Attorney’s Office, to Tom Freeman, dated Aug. 23, 2004).

<sup>44</sup> Exh. 48, p. 2 (Stefanie Knapp, *Gate May Make Cranky Neighbors*, Los Angeles Daily Journal, Aug. 3, 2004).

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The Canyon Back Alliance responded to the Councilwoman's August 27, 2004, e-mail to Concerned Residents in order to ensure that concerns about a possible trail realignment would be considered. First, the SMMC had already evaluated this option several years earlier and determined it was not feasible. Second, the extreme slope would seem to preclude construction of a multi-use trail that could safely accommodate all the existing uses of the trail, thereby degrading the quality of this established public use. Third, the steep hillsides would create erosion problems that would render the trail an inadequate alternative to the existing trail.<sup>45</sup>

The promised meeting with Councilwoman Miscikowski, which was highly anticipated by the Gate opponents who had met with her on July 29, 2004, never occurred. The Councilwoman's staff reported that she was too busy for a meeting and that Gate opponents would be contacted when a meeting was scheduled.<sup>46</sup> From July 29, 2004 to this day, all meetings involving the Councilwoman or her staff concerning the alternative trail have been kept secret from those supporting public access.

The strategy of avoiding public participation was consistent with Gary Morris' advice. After Mr. Morris attended a July 13, 2004 Brentwood Community Council meeting, where community members expressed concern that a security gate was being constructed on the Canyonback Trail, Morris cynically dismissed their concerns in a memo to Julie Pietroski, the CD-11 staffer handling the project, and his HOA client: "I think it is unfortunate but understandable that people with little or no real interest in the matter, who have only now been made aware of the gating of Canyonback, would react negatively; they have nothing to gain and just perhaps, possibly, they might have something to lose – even though most of them have never been or will be on the street in question. I hope this can be framed in context and not allowed to fester and grow."<sup>47</sup>

Presumably removing the issue from public view was determined to be the most effective way to prevent public concern from festering and growing.

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<sup>45</sup> Exh. 49 (Freeman e-mail to C. Miscikowski, dated Aug. 27, 2004).

<sup>46</sup> Exh. 50.

<sup>47</sup> Exh. 51 (G. Morris memo to J. Pietroski, R. Zien, S. Jacobs, dated July 13, 2004).

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## 7. The Public Has Been Excluded From The City's Meetings About The "Alternative Trail."

The coordination of the Canyonback Road privatization and the Canyonback Ridge development appeared inevitable by August 2004, when CD-11 staff members predicted that Kevin Keller, handling the development project, would be "dragged into" the Canyonback Gate "mess" if it eventually gets "rolled into Castle & Cooke's project."<sup>48</sup> That possibility of combining the development project with the privatization/gating of Canyonback Trail was the subject of obvious concern: "this whole thing is going to be a mess . . . messier mess."<sup>49</sup>

By November 2004, the process for rolling the two projects together appeared to become a reality. As Julie Pietroski reported to Kevin Keller: "I spoke with Gary M. recently who has been meeting with Castle & Cooke recently about the possibility of a trail, apparently he has mapped it out and it wouldn't be across the ridge it would be a longer trail, about 2 miles in length."<sup>50</sup> That was followed by an e-mail from Jeffrey Ray of Psomas, to Kevin Keller, indicating that he would like to discuss matters related to the Mountaingate project, including the Canyonback Road privatization.<sup>51</sup>

Yet, Councilwoman Miscikowski had good reason to suspect that any plan to realign the trail was doomed to fail. Her staff had contacted the Santa Monica Mountains Conservancy ("SMMC") in August 2004, requesting a meeting with Joe Edmiston, Exec. Dir. of SMMC, or Paul Edelman, Dep. Dir. of SMMC, to discuss whether an alternative trail might be feasible. At that time, her staff knew that a Sierra Club member<sup>52</sup> had offered to construct a trail and that the Crown had endorsed the

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<sup>48</sup> Exh. 52 (e-mail message from J. Pietroski to K. Keller, dated Aug. 4, 2004).

<sup>49</sup> Exh. 52 (e-mail message from K. Keller to J. Pietroski, dated Aug. 4, 2004).

<sup>50</sup> Exh. 53 (e-mail from J. Pietroski to K. Keller, dated Nov. 2, 2004).

<sup>51</sup> Exh. 54 (e-mail from J. Ray to K. Keller, dated Nov. 19, 2004).

<sup>52</sup> Mary Ann Webster of the Sierra Club had sent an e-mail to the Crown HOA on July 30, 2004, indicating that her husband is a trail consultant (1) who would design and work with volunteers to build an alternative trail, or (2) if the HOA would prefer hiring a contractor, he would design a trail that could be cut into the (footnote continued)

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proposal. Miscikowski initially believed that the proposed alternative trail would be a “win-win” because trail access could be preserved, while Canyonback residents would be able to gate and privatize their street.<sup>53</sup>

That led to a meeting involving Julie Pietroski, CD-11, Jeff Moore of the City’s Bureau of Engineering, and Paul Edelman from the SMMC, which occurred in October 2004. Julie Pietroski’s notes indicate that Edelman did not believe a trail carved into the hillside would provide sufficient access to support the scope of the public’s current recreational use of the Canyonback Trail. Any such trail would be narrow, making it a challenge for people to pass each other, it would require a lot of maintenance, and it would not be environmentally friendly.<sup>54</sup>

#### **8. The secret plan to coordinate the Mountaingate project and Canyonback Gate.**

On February 14, 2005, a meeting took place involving Councilwoman Miscikowski, Kevin Keller, and presumably Gary Morris. Mr. Keller’s notes reflect the following plan: (1) The Vesting Tract Map providing for a security-gated and privatized extension of Canyonback Road will be submitted for approval; (2) the “alternative trail” will be added to the Vesting Tract Map before it is approved; (3) Castle & Cooke will donate 288 acres of Open Space land to the SMMC; (4) the trail will be constructed *after* the Open Space land is dedicated to the SMMC; (5) once the alternative trail is created, the Crown HOA will seek to privatize and gate Canyonback Road.<sup>55</sup>

Gary Morris also met with the SMMC to pitch this secret plan to realign the trail. At the March 29, 2005 meeting at Psomas’ West LA Office, Joe Edmiston said that he met with Mr. Morris and a man who represented the Crown HOA. Frans Bigelow informed Mr. Edmiston that the gentleman with Mr. Morris was Richard

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hillside for about \$25,000 using workers with a tractor. Exh. 55 (e-mail from Mary Ann Webster, Sierra Club, to Richard Zien, Crown HOA, dated July 30, 2004).

<sup>53</sup> Exh. 56 (e-mail from J. Pietroski to R. Skei, SMMC, dated Aug. 27, 2004).

<sup>54</sup> Exh. 57 (J. Pietroski Notes, October 13, 2004 meeting).

<sup>55</sup> Exh. 27 (K. Keller Notes, Feb. 14, 2005).

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Zien, President of the Crown HOA. During this meeting, which occurred some time in early January 2005, Mr. Morris clearly led the SMMC representatives to believe that he was proposing the trail realignment on behalf of *both* the Crown and Castle & Cooke.<sup>56</sup>

The Crown HOA was aware that the wheels were turning. At its January 28, 2005 Board Meeting, the Board reported to the community that its controversial gate was back on track: “Gate Report Steve Jacobs reported that currently the association is waiting for sign-offs on plans that have been approved. Once these are obtained the gate will move forward.”<sup>57</sup>

The fact that this secret bargain has been struck is evidenced by comparing the SMMC’s September 22, 2003 letter concerning the new Mountaingate development with its April 4, 2005 letter. The September 2003 letter states that the Mountaingate Draft EIR is deficient because it fails to address the public-access problems resulting from the new development: “The development along Canyonback ridge will completely sever the trail along the ridge.”<sup>58</sup> The Final EIR, filed on February 22, 2005, responds to this objection simply by stating that “pedestrian access” will be provided through the new gated community *or* the trail will be realigned in some unspecified manner.<sup>59</sup>

No “bypass” trail was discussed or even mentioned in the Final EIR. Yet, on April 4, 2005, the SMMC responded to the Final EIR by stating that a funding mechanism must be established for “upkeep of *the newly constructed Canyonback by-pass trail*.”<sup>60</sup> What “by-pass trail”? The EIR – a public disclosure document mandated by

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<sup>56</sup> Gary Morris apparently is not an SMMC booster. In May 1997, he had this advice for Castle & Cooke: “You must contend with the input and interference of the Santa Monica Mountains Conservancy. They are like a bad cold except they do not go away.” Exh. 68 (letter, G. Morris to B. Freeman, Castle & Cooke, May 14, 1997).

<sup>57</sup> Exh. 57 (Minutes, Crown HOA Bd. of Dir. Meeting, Jan. 28, 2005).

<sup>58</sup> Exh. 106 (SMMC letter to City Planning Dept., September 22, 2003).

<sup>59</sup> Final EIR, III. B-10 (Response 6.3).

<sup>60</sup> Exh. 107 (SMMC letter to City Planning Dept., April 4, 2005).

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law – never even mentions a bypass trail. But the SMMC’s letter assumes that the bypass trail is a “done deal.”

### **9. The City Attorney’s Office has now changed its position.**

Your Office’s change of position on April 8, 2005, makes clear that the Crown HOA was correct. A deal had been struck. On February 14, 2005, the Crown’s lobbyist and Councilwoman Miscikowski outlined the “new plans” for privatizing Canyonback Road by creating a “bypass” trail. Once the bypass trail was finished, the Crown could proceed with its plan to vacate and gate Canyonback Road. Councilwoman Miscikowski then instructed Julie Pietroski to “update City Attorney with [the] new plans.”<sup>61</sup>

Things began to change radically after that February 14 meeting. On February 25, 2005, less than two weeks later, the Crown asked your Office for permission to complete the Canyonback Gate.<sup>62</sup> It asked for permission to complete the entire *Canyonback Gate structure*, as authorized under the permit that your office terminated on August 23, 2004, except that the revoked permit’s references to street vacation and installing the gates would be removed. This is essentially the same request that your Office (properly) denied on October 27, 2004. But this time the request was granted.<sup>63</sup> As a result, the Crown HOA may now complete construction of the massive Canyonback Gate structure, spanning the 60-foot wide public street and continuing into the “landscape” elements.

### **B. The “Bypass” Trail Would Grossly Degrade Public Access.**

The trail realignment as depicted on the Crown HOA’s “bypass trail” map would divert public access off the Canyonback Ridge and onto what Councilwoman Miscikowski has properly characterized as its “unstable slope.” The proposal to realign the Canyonback Trail onto the landslide-ridden slopes would degrade and jeopardize public access. The Geotechnical Investigation Report prepared by

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<sup>61</sup> Exh. 27 (K. Keller Notes, Feb. 14, 2005).

<sup>62</sup> Exh. 103 (Feb. 25, 2005 letter from N. Brestoff to Ass’t City Attorney).

<sup>63</sup> Exh. 104 (April 8, 2005 letter).

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Leighton and Associates for Castle & Cooke identifies *six* landslides and a slump along the proposed alternative trail.<sup>64</sup> These landslides have been facilitated by “the pervasive, westerly-dipping foliation and clay seams in the Santa Monica Slate Formation bedrock.”<sup>65</sup> None of these landslides or the slump will be remediated.<sup>66</sup>

Landslide Qls-1 is located along and above the proposed point of public access to the realigned Canyonback Trail, where Canyonback Road would connect to the realigned Canyonback Trail. This critical access point, however, is precariously placed along and under a 30-foot deep landslide. Landslide Qls-2 has a high measure of 56-foot deep. Its subsidiary landslide, Qls-2a, measured at 46-foot deep. Landslide Qls-3 has been measured at a depth of up to 68 feet, though drilling was limited because the boring equipment failed to reach bedrock. Landslide Qls-3a was observed at a depth of 62 feet of landslide materials before the boring equipment’s limits were reached. Finally, Qls-4 was measured at a depth of 26 feet.<sup>67</sup> Other possible landslide remains and slumps were identified along the course of the bypass trail, but they were not measured or analyzed because they were outside the project area.

The northern section of the bypass trail was not part of the Leighton and Associates study, so no landslide remains are depicted. But there is no reason to assume that it is any more stable than the southern and middle sections.<sup>68</sup>

This bypass trail cannot be maintained. Building a trail on steep, landslide-ridden terrain would require constant maintenance. No public entity has the funds to maintain such a trail. If the trail is constructed, it would be unusable for the multi-purpose recreational uses necessary for maintaining the existing public use.

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<sup>64</sup> The Leighton and Associates Geotechnical Report identifies the following landslides existing along the proposed trail realignment: Qls-1, Qls-2, Qls-2a, Qls-3, Qls-3a, Qls-4. It also identifies slump “Qs” and several possible landslides or slumps identified with a “?” symbol.

<sup>65</sup> Draft EIR, Vol II, Leighton Report, p. 12.

<sup>66</sup> Leighton Report, Table 2, p. 24.

<sup>67</sup> Leighton Report, pp. 13-14.

<sup>68</sup> Exh. 17 (Mountain Geology Report).

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But there is no evidence that the Crown or CD-11 actually care whether the “bypass” trail would last. The Crown/CD-11 plan is to construct the bypass trail and then privatize and gate Canyonback Road.<sup>69</sup> The geological fact is that the bypass trail would inevitably become impassible, inadequate for the type of public use needed to protect the existing scope of multi-use public recreational access, and unsafe. But by the time that the bypass trail actually fails or is recognized for the danger that it is, Canyonback Road will already be a private street, with a locked gate. Once that happens, it will be extraordinarily difficult and expensive for the public to regain the historic recreational use of the Canyonback Trail. This has occurred in other “private” communities that bottleneck public access to public trails.<sup>70</sup>

**C. Most Significantly, The Alternative Trail Would Threaten Life And Property In Upper Mandeville Canyon.**

**1. Mandeville Canyon has a tragic history of flooding, mudslides and landslides.**

The Upper Mandeville Canyon community has suffered tragic losses due to fire, flood, landslides and mud and debris flows. The public record is well established, but requires special emphasis to assure that Gary Morris’ irresponsible proposal never sees the light of day.

Mandeville Canyon has been designated both a “Special Flood Risk Area”<sup>71</sup> and a “Very High Fire Hazard Severity Zone.”<sup>72</sup> The combination of fire and flood creates an enhanced risk to life and property, as clearly explained by Councilwoman Miscikowski:

“Mandeville Canyon is unique in that rainstorms tend to bring significant amounts of debris down off the hillsides into the canyon, particularly in years

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<sup>69</sup> Exh. 27 (Feb. 14, 2005 notes outlining details of plan).

<sup>70</sup> Exhs. 18 & 59 (describing battle to regain public access to historic Millard Canyon).

<sup>71</sup> Exh. 81 (City of Los Angeles, Bur. of Eng., Special Order, March 5, 2002).

<sup>72</sup> Exh. 60.

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following area fires. In two major rain events in the canyon over the last few decades, after wildfires in or near the canyon, huge amounts of water, mud, rocks and debris made its way down the canyon through the watercourse. For example, in a flood in the winter of 1980, significant property damage occurred, as well as loss of life. In many cases, this damage and loss was directly attributed to the fact that the watercourse, carrying a huge amount of debris, was channeled into underground pipes, pipes which could not handle the mass of material coming at once.”<sup>73</sup>

The heightened danger caused by any blockage of watercourse devices or other flood-control mechanisms was again recognized by the Councilwoman in a series of important letters and motions intended to ensure that residents and public employees protect the integrity of the drainage system. The key is to prevent any blockage of the drainage channels and devices. Disaster results when channels are blocked, causing flooding, mudslides, debris slides and other related risks to life and property.<sup>74</sup>

Upper Mandeville Canyon suffered tremendous losses in the November 1969 Floods.<sup>75</sup> Upper Mandeville residents along the 3100 block were particularly hard hit. Robert and Rea Westenhaver, 3156 Mandeville Canyon Road, had to climb onto their roof as debris filled the watercourse, pushing a tremendous mud-flow onto their property. Almost a foot of mud spread throughout their home, and approximately five feet of dirt was left in the parking area and courtyard outside their home. Robert Tebbe, a neighbor and relative, was almost killed when he touched a metallic box and was exposed to electrical shock. He was fortuitously saved when flood waters carried a huge log careening into him, thereby separating Mr. Tebbe from the electrical charge that would otherwise have killed him. The escaping flood waters were so strong that a detached, single-story workshop on the Westenhavers’ property was turned into matchsticks, with a file cabinet washing down to Chalon Road, about two miles away. It took more than a year to repair the Westenhavers’ property damages. This

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<sup>73</sup> Exhibit 82 (letter from C. Miscikowski to Bd. of Public Works and letter to Dept. of Bldg. & Safety, dated Sept. 10 and 11, 2001).

<sup>74</sup> Exh. 83 (letter from C. Miscikowski to Bur. of Eng., July 2004); Exh. 84 (Motions concerning watercourse protection and education programs and amendment to Flood Hazard Map to include Mandeville Canyon).

<sup>75</sup> Exh. 85 (newspaper reports, 1969 flooding in Mandeville Canyon).

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watercourse channel has overflowed its banks due to blockages at least twice since 1969.<sup>76</sup>

The Westenhaver residence is just one of many residences at the toe of the watershed/landslide area through which Mr. Morris' mapped realignment would traverse. The current residents at 3156 Mandeville Canyon Road, the Williams family, recently suffered extensive property damages during the January 2005 storms.<sup>77</sup> Their home was "yellow tagged" by the City. Judith Taylor, 3252 Mandeville Canyon Road, lives within the same watershed area and likewise suffered damages during the January 2005 storms due to mudflow from the hillsides.<sup>78</sup>

These recent storm-related damages merely illustrate the existing risks – *without* the landslide destabilization that would be caused by Mr. Morris' planned grading. What would have happened if the watercourse, which was not obstructed during the 2005 storms, was filled with landslide materials destabilized by the type of grading envisioned by Mr. Morris' trail realignment plan?

The 1978 Mandeville Fire, which began on Mulholland Drive and spread through the northern borders of the Mountaingate area before spreading to Mandeville Canyon, illustrates what happens when erosion, in that case caused by fire, produces debris that is carried by heavy rains, blocking watercourses and other flood-control devices. After the 1978 Fire, Mandeville Canyon suffered tragic flooding in March 1979 *and* February 1980. Lives were lost, homes destroyed, and virtually all residents were stranded as Mandeville Canyon Road was rendered impassible.<sup>79</sup>

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<sup>76</sup> Information provided by UMCA Board Member Desmond McDonald, the Westenhaver's grandson.

<sup>77</sup> Exh. 86 (pictures of 3156 MCR residence and landslide damage).

<sup>78</sup> Exh. 87 (Feb. 25, 2005 e-mail, describing property damages caused by mudflow from hillsides; pictures of debris removal after storms; invoices for debris-removal services).

<sup>79</sup> Exh. 88 (newspaper reports of March 1979 Flood); Exh. 89 (newspaper reports of February 1980 Flood).

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During the 2005 storms, flooding occurred in areas where the drainage channels had been blocked or filled with hillside debris. A debris revetment located above 3345 Mandeville Canyon Road had been partially removed before the storms. Consequently, debris that would have been stopped by the revetment flowed into and filled the area's drainage devices, causing raging rivers to flow through residential properties and down the street, dumping rocks and debris along the way and onto Mandeville Canyon Road – the community's sole means of ingress and egress.<sup>80</sup> Photographs taken during the 2005 storms make these dangers plain.<sup>81</sup>

## **2. The threat to Upper Mandeville Canyon.**

The UMCA hired geologist Jeffrey Holt, Mountain Geology, to examine the proposed trail. Mr. Holt concluded that any attempt to grade a trail along Canyonback Ridge's unstable slopes would jeopardize life and property. His conclusion is based on the following factors:

- (1) The steep slopes along which the trail would be built, which feature an average 1:1 slope gradient (45 degrees);
- (2) the numerous landslides upon which it would be built;
- (3) the prevalence of fill, residual soil and landslide debris throughout the proposed trail and the entire watershed area;
- (4) the concentration of drainage from the proposed trail area through various west-trending tributary canyons;

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<sup>80</sup> Exh. 90 (photographs of January 2005 flood waters traveling through hillside channels and through residential community onto road). The watercourse and flood control devices on a side street off Mandeville Canyon Road, at 3363 to 3407 Mandeville Canyon Road, were also filled, causing an uncontrolled river to rush down the private road and onto Mandeville Canyon Road, demonstrating the power of hillside floodwaters. Exh. 91 (photos of escaping flood waters).

<sup>81</sup> Exh. 92 (photos of flood waters at 3345 MCR); Exh. 93 (3585 MCR); Exh. 94 (3489 MCR); Exh. 95 (3715 MCR); Exh. 96 (3099 MCR).

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(5) the fact that the concentrated drainage flows into the Upper Mandeville Canyon area, which lies at the base of the watershed;

(6) the physical relief from the Canyonback Ridge down to Mandeville Canyon, which is on the order of 500 feet;

(7) the indication on Geologic maps that foliation planes dip towards the north, i.e. towards Upper Mandeville Canyon;

(8) the fact that north-facing and northeast-facing slopes in the Upper Mandeville Canyon area are considered potentially unstable;

(9) the fact that the soil underlying the eastern portion of Upper Mandeville Canyon is subject to downhill creep and erosion;

(10) the numerous flood control and storm drainage systems within the canyon bottoms near Mandeville Canyon Road, which are subject to failure during heavy rain especially when filled with debris; and

(11) the well-documented history of flooding and mudflow problems along Mandeville Canyon Road for the past 50 years.<sup>82</sup>

Mr. Holt has therefore concluded that “*Any grading on the sensitive slopes will increase the potential for additional mudflows, debris flows, landslides, and flooding to occur, which could adversely effect the properties at the toe of slopes along Mandeville Canyon Road.*”<sup>83</sup>

Councilwoman Miscikowski is likewise aware that Canyonback Ridge’s western hillside is far too unstable for grading. She said so in a September 2003 e-mail responding to concern expressed by the SMMC about the project plan to develop homes on Canyonback Ridge: “The few homes on the west side at Canyonback are [on] the ridge lines but [at the] lower end of the ridgeline. But to do otherwise would

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<sup>82</sup> Exh. 17, pp. 3-6 (J. Holt, Mountain Geology, Engineering Geologic Memorandum).

<sup>83</sup> Exh. 17, p. 6.

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require much more grading and slope work. *They can't build on the side of an unstable slope!*"<sup>84</sup>

### 3. The bypass trail would subject the City to unlimited liability.

Public entities are liable without fault in inverse condemnation for damage caused by disturbance of land stability.<sup>85</sup> If a bypass trail is constructed along the steep and unstable slopes of Canyonback Ridge, there is no doubt that it will cause substantial instability-related damage to Upper Mandeville Canyon residents living at the toe of this watershed area.

The potential for liability due to the alteration of a flood-prone area's natural drainage course is well-illustrated by the *Costello* case. The Costello family resided at 2950 Mandeville Canyon Road. Their home was destroyed by a mudslide. They sued the City of Los Angeles and others, alleging that the mudslide was caused in part by the City's grading of a fire road just below the ridgeline east of Mandeville Canyon. The destabilized area lies just south of where Mr. Morris plans to have the alternative trail graded. The case was settled for \$1.6 million, with the City paying \$1.0 million. The City recently spent an additional \$300,000 in an effort to provide flood control protection along the fire road.<sup>86</sup>

The risk of liability for grading a two-mile trail in the steep, landslide-ridden terrain above Upper Mandeville Canyon would be far greater. And lives would be

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<sup>84</sup> Exh. 71 (e-mail from C. Miscikowski to K. Montet, Sept. 16, 2003) (*italics added*); See also Exh. 72 (K. Keller e-mail to D. Provost, Sept. 30, 2004) (characterizing as "one of the most important provisions of this [Final EIR] will be the grading report;" "As you know, many of our residents are very concerned about grading and slopes;" "Our office is also very supportive of strict and well-reviewed grading conditions – especially in this area and history"); Exh. 73 (K. Keller e-mail to D. Prevost, dated Jan. 7, 2005) ("Geology is a primary topic of concern for many community members").

<sup>85</sup> *Holtz v. Superior Court*, 3 Cal 3d. 296, 302-302 (1970).

<sup>86</sup> Exh. 97 (City File No. 99-0633).

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placed in jeopardy. The bypass trail is simply not a project that any responsible public entity would ever consider, especially in light of the area’s tragic history.

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Your Office should terminate all work on the Canyonback Gate and order the Crown to remove the entire Canyonback Gate structure. Six months after this Office first recognized that gating Canyonback Road would be illegal, there is no viable prospect for an alternative trail. The bypass trail masterminded by the Crown’s lobbyist and accepted by CD-11 in closed-door meetings is plainly infeasible. If there is any remaining doubt, your Office should consult with the Department of Building & Safety Engineering Geologist, Dana Prevost, who will confirm the conclusions of Jeffrey Holt, Mountain Geology, and Jose Sanchez, the lead geologist on the Mountaingate project.

There is no excuse for leaving the inhibiting Canyonback Gate structure in the public street along this public trail. *Remove the Canyonback Gate now.*

CENTER FOR LAW IN THE PUBLIC INTEREST

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS & LINCENBERG, P.C.

By: \_\_\_\_\_  
Robert García, Executive Director

By: \_\_\_\_\_  
Thomas R. Freeman

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- cc by mail: Nelson E. Brestoff, Esq.
- Christy Numano-Hiura, Esq.
- Dana Prevost (letter and Exhs. 17 and 105)
- Bill Lockyer, California Attorney General
- Sheila James Kuehl, State Senator
- Paul Koretz, State Assemblyperson
- Zev Yaroslavsky, County Supervisor
- Mike Chrisman, State Secretary of Resources
- Joe Edmiston, Exec. Dir., Santa Monica Mountains Conservancy
- Elizabeth A. Cheadle, Chairperson, Bd. of Trustees, Santa Monica Mountains Conservancy
- Paul Edelman, Dep. Dir., Santa Monica Mountains Conservancy

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Alex Baum, Chairman, City of Los Angeles, Bicycle Advisory Committee

James Hahn, Mayor

Antonio Villaraigosa, Councilman, CD-14

Sid García, KABC-TV

Martha Groves, Los Angeles Times

Liz Valsamis, Los Angeles Daily Journal

Bill Rosendahl, Candidate, CD-11

Flora Gil Krisiloff, Candidate, CD-11

Terry Fujimoto, Office of A.G.

Wendy-Sue Rosen, Pres., UMCA

Eric Edmunds, Vice Pres., Brentwood Hills Homeowners' Association