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File No. 3053.2

Via Hand Delivery

Sue Chang, Senior City Planner
Jimmy C. Liao, City Planner
Environmental Review Section
Department of City Planning
200 N. Spring Street, 7th Floor
Los Angeles, CA 90012-4801

Re: **Canyon Back Alliance/UMCA Objections**
Final EIR No. ENV-1999-3251-EIR
Project Title: Mountaingate Project
State Clearinghouse No. 2003071197
Tentative Tract Map No. 53072

Dear Ms. Chang and Mr. Liao:

This letter is written on behalf of the Canyon Back Alliance and the Upper Mandeville Canyon Property Owners Association ("UMCA") and supplements our letters of April 7, 2005, and May 17, 2005.

A. The Proposed "Realignment" Would Degrade The Trail's Historic Ridgeline Alignment, A Significant Adverse Impact.

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." *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 936-937 (2004), quoting Pub. Res. Code § 21001(b). Aesthetic, natural and recreational issues must be assessed in an EIR where, as here, the project is likely to significantly degrades the existing visual character or quality of a site or its surroundings, or if it would conflict with the area's established recreational uses. *Pocket Protectors*, 124 Cal. App. 4th at 937 (citing cases); *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1417 (1995).

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 2

The Plan to realign Canyonback Trail significantly degrades the recreational, aesthetic and natural attributes and uses of the trail. Canyonback Trail has *always* been aligned along the scenic ridgeline between what is now the DWP Water Tank and Canyonback Road. The developer's unstable plan would significantly degrade the quality of this trail.

The developer's latest plan, which was never described with any precision in the EIR, is to realign this historic trail off the natural, scenic ridgeline and onto a private street within the proposed gated enclave. During the May 18, 2005 Public Hearing, those members of the public who had the luxury of missing work and other obligations to attend the hearing, were shown for the first time the approximate path of the proposed alignment, as the developer's engineer used a laser-light pointer in a room too bright to actually see with any precision where the trail would be aligned.

But despite the vague description and the impossibility of pinning the proposed trail alignment down with particularity, the critical fact is clear: The developer seeks authority to realign the Canyonback Trail off the ridgeline, with natural views, and onto a private residential street in a gated enclave. The ridgeline views would be sold to the highest bidder. A mansion will occupy what has been the public trail for more than 60 years. This is precisely the type of significant adverse impact that must be scrutinized *in the EIR* – not off the cuff at Public Hearings or in behind-closed-doors negotiations. *Pocket Protectors*, 124 Cal. App. 4th at 937-938; *Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water District*, 116 Cal. App. 4th 396, 402 (2004).

1. The public objects to realigning the trail off the scenic ridgeline, through a gated community.

The public expressed strong opposition to the planned trail realignment at the Public Hearing. Public concern is an important factor in assessing the significance of a project's environmental impact. *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 106 Cal. App. 4th 715, 723 (2003); *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 310 (1988). Members of the public vehemently objected that the proposed realignment would forfeit one of the trail's most scenic hillside viewpoints, which has been freely enjoyed by the public since at least the 1940's. This strong public opposition was echoed by almost 300 people who sent in protest letters *after* the May 18 Hearing. *Exh. 129*. This is in addition to the more than 265 protest letters and 36 petition signatures submitted before the May 18th Public Hearing. *Exhs. 101, 108*. Groups such as the Los Angeles County Bicycle Coalition, the Pacific Palisades Community Council, and CORBA also sent in protest letters over the past few weeks, objecting to the belatedly-revealed plan to move the trail off its historic ridgeline alignment. *Exhs. 143, 144*.

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 3

The public has made clear that re-routing the trail through the planned private community would significantly degrade the public's long-standing use and enjoyment of the historic trail. *Exh. 129*. There are two significant ways in which the proposed realignment would degrade the trail's quality. First, routing trail users through the private gated enclave will inhibit trail use and create an environment for abuse. Trail users passing through the exclusive gated enclave will be viewed by residents as unwelcome irritants at best and, inevitably as time goes on, trespassers to *their* private property – despite the “legal” rights that are supposed to be protected by the proposed pedestrian easement. The potential for abuse in these situations is almost always realized, to the detriment of trail users. *Exhs. 10, p. 2; 16; 18; 59; 144*.

Privatized streets isolated by gates and patrolled by private security guards accountable only to the residents enhance the risk of abuse. This point was emphasized at the public hearing by Erica Flores Baltodano of the Center for Law in the Public Interest. See www.clipi.org. People who “don’t look like they belong” – because of their skin color, hair style, manner of dress, age or any number of attributes improperly associated with “otherness” – are inevitably singled-out by security guards in a manner wholly inconsistent with the public nature of parkland recreation. And, as stated by members of the “public” at the May 18 Hearing, even when trail users are not directly confronted, the very fact that they are being forced to pass through a private residential area degrades the experience.

The second significant, adverse impact is the degradation of the trail's historic alignment along the scenic ridgeline, with views of the hillsides and canyon below. If the development plan is approved, Canyonback Trail's historic alignment will be unceremoniously pushed onto the private street within the gated enclave – thereby replacing scenic vistas along the Santa Monica Mountains ridgeline with “views” of 3 and 4 car garages and “Armed Response” Security Forces. The “need” for moving the trail is apparently to make room for a single mansion with newly-privatized ridgeline views of *protected wilderness* in the Santa Monica Mountains. The land is protected with money funded by the public, not the private developer. Yet this adverse trail realignment has been proposed without taking the trouble to ask, in an EIR, whether the project would be feasible if the trail was left in its historic location. That is the very question that CEQA mandates, and it must be addressed in the EIR. *Pocket Protectors*, 124 Cal. App. 4th at 937-938; *Ocean View Estates*, 116 Cal. App. 4th at 402. Yet it is nowhere to be found in this EIR.

The public's message to the Planning Department *after* the May 18 Public Hearing has been just as clear as before the Hearing: “The Supplemental EIR must address the feasibility of avoiding or minimizing the project's adverse recreational and aesthetic effects.” And chief

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 4

among the potential mitigations measures is preservation of the historic ridgeline alignment: "The Supplemental EIR must carefully examine the option of preserving the Canyonback Trail along its historic ridgeline alignment. The Canyonback Trail has been continuously enjoyed by the public for a wide variety of recreational purposes since at least the 1940's. The trail should not be moved to make way for a single mansion within a 29-home development project." *Exh. 129; Exhs. 143, 144.*

2. The ridgeline alignment pre-dates the Mountaingate development.

The present day alignment is depicted in current USGS aerial photographs such as those attached as *Exhibit 137*. This ridgeline trail alignment is substantially the same as the alignment in August 1967, long before the Mountaingate development or the DWP Water Tank. *Exh. 139 (high-resolution USGS aerial photograph)*. Print-outs from the 1967 USGS aerial photograph clearly reveal Canyonback Trail's historic ridgeline alignment. *Exh. 132*. This is the scenic trail alignment enjoyed by the public continuously since the 1940's, which Castle & Cooke proposes to re-route through its planned development, bounded by houses, fences, gates and, inevitably, as one member of the public noted at the Public Hearing, "Armed Response" security signs and guards.

3. The ridgeline alignment pre-dates the DWP access road.

There was confusion expressed by the Hearing Officer during the May 18 Public Hearing about the relationship between the paved DWP access road and the Canyonback Trail. USGS aerial photographs (*Exhs. 132, 139*) make clear that the Canyonback Trail pre-dates the DWP access road. There was no Water Tank in 1967, and there was no paved road. The natural trail path is visible on the high-resolution photograph. *Exh. 132*.

The City of Los Angeles acquired land for the Water Tank and a non-exclusive easement for access to the planned Water Tank in 1981. *Exh. 138*. It is clear from comparing *Exhibit 137* (present-day USGS aerial photo) with *Exhibits 132/139* (the 1967 aerial photo) that the DWP access road was paved over the existing Canyonback Trail, without altering the trail's historic ridgeline location. By the time DWP paved this section of the trail, the public had long-before acquired an interest in the trail by prescriptive dedication. *May 17, 2005 letter, pp. 6-7.*

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 5

4. The Canyonback Trail has been used by the public for recreational purposes continuously since the 1940's.

The May 17, 2005 letter establishes the continuous public use of the trail for recreational purposes, from the 1940's to present. *Exhs. 109-121*. At the Public Hearing, however, Frans Bigelow, the developer's representative, showed a picture of a gate on Canyonback Trail, situated where the DWP access road meets Canyonback Road. The picture was taken from an extreme angle, creating the misleading impression that there was virtually no space for trail users to pass through the gate. Mr. Bigelow described the gate as impeding not only motor vehicle access but also trail users on foot or bike: Speaking of the gate, he said that "they impede probably all kinds of traffic, whether pedestrian or vehicular. Pedestrians, I think, currently have to walk around or do the best they can to get through it." He then characterized the proposed pedestrian access through the private street as a "significant improvement" since there will no longer be any "obstacles" like the current gate.

That characterization of the existing gate is absurd. The gate is accurately depicted in *Exhibit 140*. It is inconceivable that anybody fit enough to use the trail would have a problem negotiating the wide space provided for access. This is not an access obstacle. Like virtually all gates separating public trails from public streets, including Conservancy gates, this gate is designed to prevent or at least deter people on motorized vehicles, *e.g.*, motorcycles and mopeds, from using the trail. The gate is easily accessible. The plan for pedestrian access along a paved sidewalk/street in a gated enclave is absolutely no "improvement," significant or otherwise.

5. The newly-proposed trail alignment was not described in the EIR and remains entirely vague even after the Public Hearing.

The EIR failed to describe the manner in which the trail would be aligned. It was only during the May 18 Public Hearing that the proposed trail route was roughly depicted. While the developer's engineer purported to show the area of realignment, the public could not follow the pointer due to distance, angle and lighting. And the public was not alone. Paul Edelman of the Santa Monica Mountains Conservancy remarked that he had *never* seen the proposed alignment, not even on a document or map depicting the alignment.

Similarly, the City Engineer made clear his conclusion that the trail alignment was inadequately vetted. He emphasized that he was not comfortable with the lack of specificity about the trail alignment and that his office needed more information if a public easement was being considered: "Further information should be provided to us as far as the new location or

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 6

even existing location of the hiking or trail path” would be placed. The public, of course, is entitled to the same information, with the information specified in a properly-circulated EIR.

Mr. Edelman also objected to the EIR’s proposal that the final trail alignment would be decided *later* in negotiations with the Conservancy. He said that the Conservancy can have a “veto” over a proposed alignment, but the proposal to realign the trail off the historic ridgeline is “a community issue” that should be decided with public disclosure and input into the process. For that reason, he emphasized that “we urge that trail quality” and the trail’s “exact alignment be made public.” And to do this, there “should be a document that we can look at.” This plea for a more public process is simply a restatement of that which CEQA mandates. *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99, 122, 130-131 (2001).

Mr. Edelman later emphasized that the EIR’s description of the trail realignment could mean any number of things and the documents provide no specificity as to the new trail’s “scenic” attributes. The Hearing Officer then suggested that this ambiguity should be clarified by submission of a map “that draws what you mean.” But the very need to request a map clarifying the developer’s proposed trail alignment *after* the Final EIR has been circulated misses the entire point of the EIR process. If the trail alignment is important to the quality of the trail, as the question implicitly presumes, then it *must* be in the EIR. That is the *process* that CEQA mandates.¹ But it is entirely absent here.

6. The privately-negotiated “easement” was not disclosed in the EIR and even the City Engineer recognizes its inadequacy.

Measures designed to mitigate a project’s significant adverse consequences must be in the EIR. *Federation of Hillside and Canyon Associations v. City of Los Angeles*, 83 Cal. App. 4th 1252, 1260-1261 (2000). But the easement offered on the eve of the Public Hearing has never been put before the public for consideration of whether it is sufficient. There is a long history in this region of failed mitigation efforts. The purpose of EIR analysis is to seek meaningful public input on proposed mitigation measures. Easements often raise unforeseen problems, which lead to costly litigation after the developer is gone and residents of the private enclave

¹ “CEQA compels process. It is a meticulous process designed to ensure that the environment is protected.” *Planning and Conservation League v. Dept. of Water Resources*, 83 Cal. App. 4th 892, 911-912 (2000).

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 7

become territorial. Millard Canyon is a recent example. CORBA's representative, Jeff Klinger, spoke to this concern at the Public Hearing.

That is why EIR analysis of mitigation-enforcement measures is a critical function of the EIR process. But it has been ignored here. Instead, the developer took "input" from a single private group in crafting its last-minute mitigation measure behind closed doors. Hence the public's justified concern about the inadequacy of the developer's 11th hour "mitigation" proposal.

Castle & Cooke finally unveiled its proposal during the Public Hearing. But, as the City Engineer made clear, the proposal raised far more questions than it answered. Should the grantee of the easement be a public or private entity? Should it be the City or another entity? If it must be a private easement, would it be enforceable by the public? Would a private as opposed to public easement be more difficult to enforce? Who would know about this easement in the future? Would the burden of enforcement fall to the public to enforce privately, or would a public entity enforce the right through legal action if necessary? Just what kind of "animal" is a public easement, and how does it compare to a private easement in terms of protecting the public's rights? What about the DWP's right of access? How does that affect the scope of the easement? If the recreational trail is maintained on the same access route as the DWP access road, can the DWP terminate access if it believes public access might threaten security?

Every one of these questions was raised or implied by the City Engineer at the Public Hearing. *But no answers were provided.* At the end of the Hearing, the Hearing Officer offered that she would contact the City Attorney's Office to ask about "the best option" for purposes of drafting an easement in terms of protecting the public's right of access after the new residents move into the private and gated enclave. While this effort is appreciated, it is grossly insufficient under CEQA, which mandates that this type of scrutiny occur within the pages of the EIR – not behind the cloak of privilege after the Administrative Record is closed. *Federation*, 83 Cal. App. 4th at 1260-61.

This process violates CEQA's mandate for public resolution of mitigation issues. The public has been kept in the dark as its historic trail is being placed in jeopardy by influential developers and government officials. CEQA is about public decision-making on matters of environmental protection. The process CEQA compels is not being honored. *Planning & Conserv. League*, 83 Cal. App. 4th at 911-912.

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 8

B. The Development Would Also Sever The Canyonback-Mt. St. Mary's Trail Route – Another Significant, Adverse Environmental Impact.

The second significant recreational impact involves the Mt. St. Mary's Fire Road trail. It is clear that *if* the Stoney Hill portion of the development project severs the public's recreational access to the Canyonback-Mt. St. Mary's trail route, then this adverse impact on the public's recreational use of these otherwise connected mountain trails would trigger a *full EIR analysis* of feasible ways to avoid or mitigate that impact.² But if the Canyonback-Mt. St. Mary's trail route is *already irreparably severed*, then the project would not seem to be the *cause* of this adverse recreational impact. So the legality of the existing Stoney Hill Gates is an issue that the Planning Department must resolve in order to determine whether the developer's Stoney Hill project will adversely affect the public's recreational use of the Mt. St. Mary's-Canyonback trail route.³

1. The disputed legal issue over the Stoney Hill Gates.

This issue was raised at the Public Hearing. Canyon Back Alliance objected that the EIR is deficient for failure to analyze the project's significant, adverse impact on the recreational use of the Canyonback-Mt. St. Mary's trail route. This adverse recreational impact, which should have been analyzed in the EIR, must be addressed in a Supplemental EIR *before* the Planning Department considers the developer's proposed Vesting Tract Map.⁴

But the City Engineer advised the Hearing Officer at the May 18, 2005 public hearing that the withdrawal of the Stoney Hill streets from public use "was done properly, legally, and . . . the permit to put a gate was issued legally." He explained that he had reviewed the Bureau's files and assured the Hearing Officer that the "gate was put up there by the correct process." Thus, according to the City Engineer, the Stoney Hill Gates are legal and they have already severed public access. Hence the Stoney Hill project has no additional impact in the trail route. The City Engineer's legal conclusion, however, is not correct.

² April 7, 2005 letter, pp. 7, 15-17, 18-19, 24-31, 38-42.

³ We have asked that the City Attorney's Office advise the Planning Department that the Stoney Hill Gates are illegal. *Exh. 141*.

⁴ May 17, 2005 letter, pp. 8-10.

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 9

2. The Stoney Hill Gates are plainly illegal and will be removed.

The City of Los Angeles purported to withdraw the public streets within the Stoney Hill Enclave from public use in 1983. In doing so, the City invoked Government Code § 37359.⁵ The City, however, lacks statutory authority to withdraw *public streets* from public use while allowing local residents to continue using the streets. The City already knows this established legal fact. In 1994, the Court of Appeal expressly ruled that the City of Los Angeles had *no authority* to withdraw public streets from public use while allowing local residents to continue using the “withdrawn” streets. *Citizens Against Gated Enclaves v. Whitley Heights*, 23 Cal. App. 4th 812, 818 (1994). The *Whitley Heights* Court specifically held that the City’s reliance on Government Code § 37359 was an unauthorized artifice for evading the dictates of Vehicle Code § 21101.6. Consequently, City’s purported Gov. Code § 37359, “withdrawal” of the Stoney Hill public streets from public use, which allows local residents exclusive use of the streets, is likewise a legal nullity.

The City’s statutory duty to maintain equal access on public streets like those in the Stoney Hill Enclave is plainly stated in Vehicle Code § 21101.6, which codifies the public’s fundamental right of equal access as articulated in *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749 (1977). The statute specifies that “local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street.” The Stoney Hill Gates, like those in *Whitley Heights*, clearly violate Vehicle Code § 21101.6 and should never have been installed. The City’s failure to remove the illegal gates *after* the *Whitley Heights* decision is inexcusable.

The Bureau of Engineering has willfully chosen not to enforce Vehicle Code § 21101.6. More than ten years after *Whitley Heights* made crystal clear that the City lacks authority to withdraw public streets from public use while allowing privileged use by local residents, the City continues to confer upon the politically-connected Stoney Hill residents⁶

⁵ Exh. 130 (Public Records Request, dated May 19, 2005); Exh. 131 (Response to Request and select records); Exh. 125 (signs posted outside Stoney Hill Gated Enclave).

⁶ Exh. 32 (Bill Boyarsky, *Money Buys Control*, Jewish Journal (April 2, 2004), describing political clout exercised by Louise Frankel, Stoney Hill resident and President of the Mountaingate Community Association, who “took credit for her precinct registering a high vote for [CD-11 Councilwoman Cindy] Miscikowski”); Exh. 35 (describing Ms. Frankel as “well connected political activist”); Exh. 37 (CD-11 e-mail, describing meeting (footnote continued))

Sue Chang
 Jimmy C. Liao
 June 17, 2005
 Page 10

exclusive access to the illegally withdrawn public streets. This failure to maintain equal access to public streets violates the Bureau's non-discretionary duty to enforce state law. As the Supreme Court recently emphasized, when a duly enacted statute imposes a ministerial duty⁷ upon an executive official to follow the dictates of the statute in performing a mandated act, the official has *no authority* to disregard the statutory mandate. *Lockyer v. City and County of San Francisco*, 33 Cal. 4th 1055, 1068-1069, 1080 (2004).

a. The City *illegally* withdrew the Stoney Hill public streets from public use.

The blatant illegality of the City's conduct could not be clearer. "The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control." *Ex Parte Daniels*, 183 Cal. 636, 639 (1920); *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 549-550, 553 (1982). The public right to use the streets for travel or transportation is not a mere privilege; it is "a common and fundamental right." *Citizens Against Gated Enclaves v. Whitley Heights*, 23 Cal. App. 4th 812, 819 (1994) (quoting *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749, 753 (1979)). This right applies equally to all people of the state. Consequently, public streets cannot be "partially" closed, whereby a privileged few are given a preferential right of access. *Id.* This fundamental right was codified after *Lafayette* in Vehicle Code § 21101.6.

The *Whitley Heights* court recognized that the effect of withdrawing the streets from public use was to restrict public use while allowing local residents preferential access. That constitutes an illegal "partial closure" in violation of the public's fundamental right of equal access to public streets. The Court in *Whitley Heights* held that the *only* lawful mechanisms for effecting a partial closure are through the street vacation and street abandonment procedures, pursuant to Streets & Highways Code § 8323 and 959, respectively. But street vacation and abandonment procedures are not authorized for "exclusive private use" or if "there is a present or future use for the road." *Whitley Heights*, 23 Cal. App. 4th at 820-821. The City could not (and "wisely" did not even try to) justify its partial street closure on either basis

between CD-11 staffer and Louise and Ernie Frankel; "Ernie is making a hard sell to include the privatization of Stoney Hill Road on the proposed tract map").

⁷ "A ministerial act is an act that a public officer is required to perform in a prescribed manner or in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when given state of facts exist." *Kavanaugh v. West Sonoma County Union High School Dist.*, 29 Cal. 4th 911, 916 (2003).

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 11

because (1) the public streets were gated for exclusive private use *and* (2) the roads, if not gated, would be used for travel by the public. *Id.*

In *Whitley Heights*, the City of Los Angeles (appearing as *amicus curie* in support of the gated enclave) argued that it properly terminated public access to the public streets within the Whitley Heights enclave by withdrawing the streets from public use under Government Code §§ 37359 and 37361. The Court of Appeal flatly rejected the City's reliance on Government Code § 37359. The general authority to withdraw public streets from public use conferred by Government Code § 37359 does not authorize the partial closure of a street. If it did, it would nullify the specific prohibitions of Vehicle Code § 21101.6 and the "fundamental right" of equal access to public streets that § 21101.6 was designed to codify. As recognized in *Whitley Heights*, the City's interpretation of Government Code § 37359 would eviscerate the public's right of equal access to public streets because any partial closure could just as easily be labeled a "withdrawal" from public use. Fundamental and express statutory rights cannot be so easily usurped. *Whitley Heights*, 23 Cal. App. 4th at 823-824.

b. The Stoney Hill Gates will be *removed*.

Local executive officials have a mandatory duty to enforce state law. *Lockyer*, 33 Cal. 4th at 1080, 1093, 1094 fn. 24. The Bureau of Engineering, however, has apparently chosen not to enforce Vehicle Code § 21101.6 in the manner required by *Whitley Heights*. Instead, the Bureau of Engineering has decided to allow local residents to restrict public access to public streets if those streets were "withdrawn" from public use under Government Code § 37359 *before* the *Whitley Heights* decision.

Absent highly unusual circumstances, such as a drastic break with established precedent, judicial interpretations of statutory law *must* be applied retroactively.⁸ The *Whitley Heights* decision represents no dramatic break from established precedent. *Just the opposite*. The decision is founded upon well-established precedent; it simply rejects what it finds to be the City's improper attempt to *nullify* established judicial precedent and the statute designed to

⁸ *Newman v. Emerson Radio Corp.*, 48 Cal. 3d 973, 978-982 (1989) ("general rule that judicial decisions are given retroactive effect is basic in our legal tradition"); *Waller v. Truck Ins. Exchange*, 11 Cal. 4th 1, 24 (1995), applying *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993) (civil decisions "must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule").

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 12

codify that precedent. The Court held that the City's purported reliance on Government Code § 37359 as authority for partially closing the public streets (1) was an improper attempt to evade the clear mandate of Vehicle Code § 21101.6, (2) ignored the "fundamental right" of equal access to public streets as recognized in the landmark *City of Lafayette* decision, which held that municipalities have no power to partially close public streets by allowing access to only a select few members of the public, and (3) side-stepped the ruling in *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982), which held that the statute authorizing municipalities to "close" public streets does *not* authorize a "partial closure," whereby the general public cannot freely use the streets, but local residents can do so.

In sum, there is no justification for the City's failure to apply *Whitley Heights* to public streets that it "withdrew" from public use in violation of Vehicle Code § 21001.6 *before* 1994. The law did not change in 1994. City officials are therefore charged with the non-discretionary responsibility for enforcing Vehicle Code § 21101.6 as interpreted by the courts, not picking and choosing when to apply the law. The City must therefore reinstate unrestricted public access on the public streets within the Stoney Hill Enclave.

3. Severing the Canyonback-Mt. St. Mary's trail route would affect a significant, adverse environmental impact.

Castle & Cooke is poised to do that which the current Stoney Hill residents will soon be precluded from doing – severing public access along the Canyonback-Mt. St. Mary's trail route. This would significantly impair public recreational use of the trail route. Long before the Mountaingate community was developed, the Canyonback section of the Kenter Fire Road trail connected directly to the Mt. Saint Mary's Fire Road trail.⁹ The public enjoyed unrestricted recreational use of the path connecting the Canyonback and Mt. St. Mary's trails. Public recreational access along this route continued even *after* construction of the Stoney Hill Enclave, but it has become increasingly difficult during the past ten years.¹⁰

⁹ Exh. 132 (USGS aerial photo from August 1967 depicting path connecting Canyonback and Mt. St. Mary's trails through the area on which Stoney Hill Enclave was later constructed).

¹⁰ Exh. 109 (Schwartz Decl., testifying to the continuous public recreational use of the Canyonback-Mt. St. Mary's route from 1960 through 1983); Exh. 119 (Byk Decl., testifying to continuous public recreational use of the Canyonback-Mt. St. Mary's route from 1974-present); Exh. 118 (Edmunds Decl., testifying to continuous public recreational (footnote continued))

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 13

If the developer is permitted to sever public access between these two historic trails, residents of the Stoney Hill Enclave and their invited guests will have the right to enjoy unrestricted access between these trails, while the general public will not.¹¹ The illegal Stoney Hill Gates, which must soon be removed, have negatively impacted public recreational access in this manner, as trail users have observed. UCLA Professor Bruce Hayes, who hosts a trail-runners website, has described the Mt. St. Mary's Fire Road Trail, as "a perfectly pleasant mountain road, with views of the Getty Center." But he has complained that this enjoyable route "ends abruptly after about two miles; you run smack up against a difficult-to-cross barrier at the Mountain Gate housing development."¹² Another UCLA Professor who frequently enjoys the Mt. St. Mary's trail, Rebecca Emigh, also wishes that the trails connected as they did in the past. *Exh. 142*. They are not alone. *Exhs. 118, 119, 129*.

The Stoney Hill Gates had severed this trail route, but not legally. Those gates must and will be removed. For that reason, if the new development plan for closing access on the extended Stoney Hill Road is approved in the Tract Map, it *will* cause a significant adverse impact on recreation. The Final EIR, however, does not even mention the trail, much less ways to mitigate this impact. Consequently, a Supplemental EIR is required. The Supplemental EIR must analyze ways to avoid mitigating this adverse recreational impact.

use of the Canyonback-Mt. St. Mary's route from 1979-present); *Exh. 142* (frequent trail users disappointed that Mt. St. Mary's trail no longer connects to Canyonback Trail).

¹¹ *Exhs. 118 & 119*.

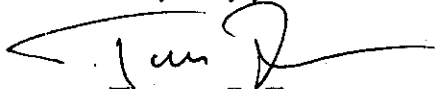
¹² *Exh. 133* (Bruce Hayes, Nice Places To Jog In West Los Angeles, www.linguistics.ucla.edu/people/hayes/Personal/Jogging/Index.htm).

Sue Chang
Jimmy C. Liao
June 17, 2005
Page 14

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For these reasons, and those stated in the prior letters, a Supplemental EIR must be prepared analyzing the project's adverse effect on the public's use and enjoyment of recreational trails, and feasible ways to avoid or mitigate those adverse effects.

Very truly yours,



Thomas R. Freeman

TRF:slp

cc: Robert García, Executive Director
Center for Law in the Public Interest

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