

proposed 2012-2030 General Plan Update is consistent with the 1993 and 2007 General Plans, no changes to the Zoning Code are required.

### **ISSUES RAISED**

**Objection to the Adoption of the 2012-2030 General Plan Update.** At the August 28, 2013 Planning Commission public hearing the law firm of Alvarado Smith, representing D&M Investments, Inc. (current owners of approximately 192-acres of hillside property described as Tax Assessor Parcels 8527- 001-001, 8527-001-008, 8527-001-009 and 8527-001-012) filed written and verbal objections to the adoption of the recommended iteration of the draft General Plan 2012-2030 Update.

The Planning Commission heard rebuttal testimony to the effect that the 2012-2030 General Plan Update designation of the subject property was substantially the same as the designation, density, intensity, and description of the property as set forth in the City's 1994 and 2007 General Plans.

It was apparent at the Planning Commission hearing that D&M Investments, Inc. and their legal representatives did not have a clear understanding of the role of the general plan and the City's zoning regulations as they relate to the development potential of the property in question. Attempts were made to clarify and reiterate that the proposed General Plan was essentially the same as the 1994 and 2007 General Plans. No change to the development potential of the property in question was considered or anticipated.

Based on the reports and testimony presented to the Planning Commission at the public hearings the Planning Commission found that the long-range goals and objectives for the community, including the property in question, are substantially consistent with those contained in the 1994 and 2007 General Plans. The May 28, 2013 draft General Plan Update does not impact the existing development potential of the 192-acres purported to be owned by D&M Investments, Inc.

**Appeal of the Planning Commission's General Plan Recommendation.** On August 30, 2013 the law firm Alvarado Smith filed an appeal with the City Clerk regarding the Planning Commission's recommendation that the City Council adopt the May 28, 2013 iteration of the 2012-2030 General Plan Update. The Planning Commission's recommendation was not an appealable item because no final action was taken and the City Council is the final decision maker under state law; therefore no appeal fee was requested, and no hearing was ever set.

**City Attorney Clarification of General Plan Issues.** The Bradbury City Attorney's office (Wallin, Kress, Reisman & Kranitz, LLP) prepared a response dated September 16, 2013 to address the issues raised by Alvarado Smith. The City Attorney's conclusion is that there is nothing in the draft 2012-2030

General Plan Update that changes the development potential of the property in question as specified in the 1993 and 2007 General Plans. The letter provides references to various elements of the 2007 General Plan to dispel the allegations set forth in Alvarado Smith's letter. The 192-acre property remains in the A-5 (SP) zone and development continues to be allowed at the rate of one dwelling per 5 acres or as may be modified in accordance with the provisions of Chapter 9.06.020 (Hillside Development Standards) of the City's Zoning Code. Section 9.06.020.190(C) of the Bradbury Zoning Code specifies the minimum size of newly created lots subject to the hillside development standards to be a function of the average percent slope of the property. Newly created lots located on a site having an average percent slope of 50% or greater must have an area two times the area required by the underlying zoning.

**Further Objections and Response.** Despite the City Attorney's response to Alvarado Smith assuring them that there was no change to the development potential of their client's property, Alvarado Smith sent another letter on October 28, 2013 again alleging that their clients would not be able to develop their property under the 2012-2030 General Plan Update. In order to make perfectly clear that this is not the intention and erase doubts for future users of the General Plan, revisions have been made to the language of the text. Before the City could share the revisions with Alvarado Smith, they sent still another letter, late Friday November 8, 2013 continuing the objections. By letter dated November 14, 2013, John, Anne, Bill and Glenn Chadwick, who own the remaining portion of the 302 acres, filed a letter echoing the concerns of the raised by Alvarado Smith regarding the ability to develop there property.

The City Attorney's office has prepared another detailed response to Alvarado Smith, refuting the allegations and again establishing that the 2012-2031 General Plan Update does not change the development patterns allowed under the 1993 and 2007 General Plans. A copy of this letter will be provided to the City Council prior to the hearing on November 19, 2013 as well as to the Chadwicks.

It is important to note that there are no substantive changes due to the revisions made to the draft that was viewed by the Planning Commission.. These revisions make clear that the 302 acres of hillside property remains in the A-5/Specific Plan zone as shown on the current zoning map for the City and that while there is the ability to develop the property in accordance with the City's existing development code, such development may be difficult due to the economics and topography of the area. The land use designation has been changed from "Open Space, Hillside Preservation," to "Open Space, Privately Owned Undeveloped," to eliminate the perception that "preservation" meant that the property could not be developed. Additionally it is noted that the fact that the General Plan recognizes that there are no current access roads does not mean that a private developer could not come up with a plan to develop such roads if it meets the City's standards.

**Additional Correspondence from Alvarado Smith.** In addition to the objections raised regarding the General Plan and CEQA analysis, Alvarado Smith has also sent a flurry of public record act request letters and raised issues regarding a conflict of interest.

## **ENVIRONMENTAL ASSESSMENT**

The City of Bradbury adopted a comprehensive General Plan in 1993. As part of the adoption process the City Council certified an Environmental Impact Report (EIR) for the project. In 2007 the City Council reviewed the 1993 General Plan and found that the goals, objectives, policies and land use patterns were still relevant and appropriate for the community.

The City's Planning Commission has recommended retaining the land use patterns established by the 1993 General Plan and the subsequent 2007 update of the plan. Data in the General Plan 2012-2030 Update has been reviewed and revised to reflect demographic changes made to the City within the past 19 to 20 years. The proposed General Plan Update has been rewritten to be more consistent with the State General Plan Guidelines; however, the basic underlying principles remain the same. A Climate Action Plan has been added to the General Plan in response to direction provided by the State of California.

An Initial Study was prepared which analyzed the potential impacts of the proposed General Plan 2012-2013 Update. Portions of the Initial Study were based on studies by Wildan done in the late 1990s relating to slope analysis and earthquake faults. The Initial Study concluded that there were no significant impacts that had not been previously identified by the 1993 Certified EIR. Accordingly, an Addendum to the General Plan FEIR (SCH No. 93-101-038) is proposed as the appropriate means for the City to document that the 2012-2030 General Plan Update does not trigger the need for additional environmental review under CEQA Guidelines Section 15162. The Addendum demonstrates that the circumstances, impacts and mitigation measures identified in the 1993 City of Bradbury General Plan Final EIR remain substantively unchanged by this project. In addition, the Addendum supports the finding that the proposed General Plan Update does not raise any new issues and does not cause the level of impacts identified in the previous certified EIR to be exceeded. As part of its action, the Planning Commission recommended that the City Council adopt the Addendum No. 1, which will then be filed with the original FEIR for the 1993 General Plan.

The fact that the General Plan Update changes the name of the Estate 5 Acre/Hillside Development Overlay" land use designation to "Open Space, Privately Owned Undeveloped" (previously identified as Open Space, Hillside Preservation,)" is meaningless for purposes of CEQA review as the name

change involves no physical impacts of any kind. Similarly, the fact that the current update estimates growth in the 302 acres at 0 for planning purposes instead of 32 units recognized in previous iterations of the General Plan is also meaningless for CEQA purposes as the assumed reduction does not increase the level of any impacts previously analyzed. Again, this change does not preclude any actual development in the area subject to the City's development standards. If a development proposal is submitted, detailed studies will be required at that time to address environmental items such as access, ridgelines, streams and sensitive flora and fauna.

## **ANALYSIS**

**Public Participation:** Over an 18-month period, the City's appointed nine-member General Plan Steering Committee reviewed the City's existing long-range development goals, objectives and policies. As part of the review process the Committee utilized a myriad of techniques to engage the residents in the general plan preparation process. Public meetings and a workshop were held to allow public participation in the planning process and to solicit input from residents and interested parties. Requests for input regarding the preparation of the general plan were posted on the City's website. City newsletters followed the progress of the Steering Committee and encouraged public participation. Local surrounding governmental jurisdictions were contacted for their input. Utility companies were given the opportunity to comment. Care was taken to have the draft general plan available for public review and comment. Effort was expended to consult and coordinate the preparation of the general plan with all interested parties. The opportunity for the public to participate and comment was comprehensive and extensive. The Steering Committee and the Planning Commission are convinced that the draft General Plan 2012-2030 Update represents the vision of the residents.

**Overview:** The recommended draft General Plan 2012-2030 Update is very similar to the General Plan adopted by the Bradbury City Council in 1993 and 2007. The overwhelming opinion of community residents is that the City of Bradbury, as it exists today, is a wonderful place to live and that no change in the long-range development goals and objectives should be considered.

The historic goals that have guided the development of the community are appropriate and they should continue to be embraced by future policy makers. The physical development of the City has demonstrated that creating a wonderful place to live can also be sensitive to the existing natural environment. The proposed General Plan 2012-2030 Update recognizes the natural limitations and constraints that have a direct bearing on development. This long-range planning document blends the community's desire to live in a quiet peaceful locale with the responsibility to be a steward for the preservation of the natural environment.

**General Plan Content:** California State Law mandates that each General Plan contain at least the following seven elements that must address: 1) Land Use; 2) Circulation; 3) Housing; 4) Open Space; 5) Conservation; 6) Noise; and 7) Safety. Recently, the State legislature expressed concern regarding climate change and greenhouse gas emissions. Assembly Bill AB 32, (The California Global Warming Solutions Act of 2006) set the stage for addressing activities that impact the global climate. Senate Bills, SB 375 and SB 575 identify greenhouse gas emission reduction targets for passenger vehicles and light trucks. This General Plan 2012–2030 Update contains an element (Climate Action Plan) which outlines the City’s goals, policies and action plans that are focused on the reduction of greenhouse gases within the community.

The General Plan 2012–2030 Update contains the seven basic mandated elements plus a Climate Action Plan. Some of the mandated elements have been combined, as permitted and encourage by State law. The following elements are located in the Bradbury General Plan 2012-2030 Update:

1. **Land Use Element;**
2. **Circulation – Transportation Element;**
3. **Housing Element** (*Because the update and revision schedule for the Housing Element differs from that of the remaining general plan elements the Housing Element is an independent document*);
4. **Community Resources Element** (*Combines the mandated Open-Space and Conservation Elements*);
5. **Health and Safety Element** (*Combines the mandated Noise and Safety Elements*);
6. **Climate Action Plan.**

Each element contains the community's goals, objectives, policies and implementation measures related to that specific General Plan Element. All of the elements meet the test for compliance with local desires and State mandated objectives. Furthermore, all of the elements are internally consistent so that conflict between the various goals and objectives has been eliminated.

**General Plan Review and Amendment Process:** California Government Code Section 65400 requires the City to annually review the General Plan and the corresponding Implementation Plan. An annual report should be prepared for review and approval by the City Planning Commission and the City Council, and forwarded to the State Office of Planning and Research and the State Department of Housing and Community Development on or before October 1 of each year. Information and suggestions for preparing the annual review report can be found in the State of California General Plan Guidelines.

The annual review report is intended to provide information on how the General Plan is being implemented; any necessary course adjustments or modifications

to the General Plan needed to improve implementation; the correlation between land use decisions made and existing objectives, policies, and tools; the progress made in meeting the City's share of regional housing needs pursuant to California Government Code Section 65584; and the City's efforts to remove constraints to the maintenance, improvement, and development of housing.

As a living document, the General Plan is periodically reviewed and amended to reflect changes in the housing market, the economy, etc. Should individual elements require amendment; changes can be proposed after adequate posting of public hearing notice as per State law. The General Plan may only be amended up to four times per year.

**Implementing the General Plan:** The implementation programs and actions described in each of the various General Plan Elements should be regularly reviewed because they outline the actions and methods needed to be taken by the City to carry out the General Plan goals and policies.

The Implementation Programs allow decision makers to understand the importance of different programs and the relative priority in advancing the long-term goals of the community. They inform City decision makers about other related planning efforts, such as Capital Improvement Plans and even the annual budgeting process. When used correctly, the General Plan can be the single most powerful tool for effecting long-term change within the community.

**Long-Range Goals, Objectives and Policies:** Each General Plan Element contains a section which describes the recommended planning goals, objectives and policies.

## **ALTERNATIVES**

The City Council should open and conduct the public hearing. After the public hearing is closed, the City Council may wish to consider the following alternatives:

**Option 1.** Remand the General Plan 2012-2030 Revised Update back to the Planning Commission for additional examination.

**Option 2.** Find that certain minor modifications to the recommended General Plan 2012-2030 Revised Update are appropriate before the document is adopted and make an appropriate determination regarding whether the Addendum is sufficient. If the changes cannot be made at the meeting then direct staff to make the minor modifications to the recommended General Plan document and return it to the City Council for review and adoption; in this case the City Council should continue the public hearing to a time and date certain as necessary.

**Option 3.** Find that the recommended General Plan 2012-2030 Revised Update accurately reflects the long-range planning goals and objectives of the community and that the Addendum adequately analyzes the environmental impacts in accordance with CEQA. Then adopt the attached draft resolution setting forth these actions.

## **ATTACHMENTS**

### *General Plan/CEQA Documents*

- Exhibit A 2007 General Plan
- Exhibit B Planning Commission Resolution No. 13-226.PC
- Exhibit C City of Bradbury Draft General Plan 2012-2030 Update May 28, 2013 -Revised.
- Exhibit D Addendum No. 1 of the 1994 General Plan Final EIR and the 1994 FEIR.
- Exhibit E Draft City Council Resolution adopting the 2012-2030 General Plan Update
- Exhibit F Alvarado Smith Objections to the proposed General Plan Update dated August 28, 2013
- Exhibit G Alvarado Smith Appeal of the Planning Commission's Recommendation August 30, 2013
- Exhibit H City Attorney's letter of September 16, 2013 to Alvarado Smith, clarifying General Plan Issues
- Exhibit I Alvarado Smith letter of October 28, 2013
- Exhibit J Alvarado Smith letter of November 8, 2013
- Exhibit K Alvarado Smith letter of November 12, 2013
- Exhibit L Glenn Chadwick letter dated November 14, 2013
- Exhibit M Appraisal of D&M Property
- Exhibit N Appraisal of Chadwick Property
- Exhibit O City Attorney's Response to Alvarado Smith letter dated November 14, 2013 (to be supplied)

### *Public Records Act Requests*

- Exhibit AA Alvarado Smith letter request dated August 28, 2013
- Exhibit BB Alvarado Smith letter request dated September 10 & 12, 2013
- Exhibit CC Alvarado Smith letter request dated October 25, 2013
- Exhibit DD Alvarado Smith letter request dated November 8, 2013
- Exhibit EE Robert Bodkin letter request dated November 11, 2013
- Exhibit FF Chadwick request dated November 13, 2013

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "A"**

City of Bradbury

2007 General Plan

(See Separate Document)

Previously provided

City Council Report

General Plan 2012-2030 Update

**EXHIBIT "B"**

Bradbury Planning Commission

Resolution No. 13-226.PC

Recommending Adoption of the  
General Plan 2012-2030 Update

City Council Report

General Plan 2012-2030 Update

**EXHIBIT "C"**

General Plan 2012-2030 Update  
May 28, 2013  
Previously provided

(See Separate Document)

*Version 11-14-13 provided for review on the City website*

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "D"**

Addendum No. 1  
City of Bradbury General Plan 1993 EIR  
(SCH No. 93-101-038)  
And  
City of Bradbury General Plan 1993 EIR

(See Separate Document)

Previously provided

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "E"**

Draft City Council Resolution  
Approving and Adopting

Final EIR General Plan 1994 Addendum No. 1  
&  
General Plan 2012-2030 Update  
May 28, 2013

# **DRAFT**

## **RESOLUTION NO. 13-\_\_\_\_. CC**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY BRADBURY, CALIFORNIA ADOPTING A COMPREHENSIVE AMENDMENT TO THE GENERAL PLAN NOT INCLUDING THE HOUSING ELEMENT AND ADOPTING AN ADDENDUM TO THE 1994 GENERAL PLAN FINAL EIR**

#### **GENERAL PLAN AMENDMENT NO. GPA 13-01 GENERAL PLAN 2012-2030 UPDATE**

#### **RECITALS**

- WHEREAS,** Section 65300 of the California Government Code requires city planning agencies to prepare and the legislative body to adopt a comprehensive long-term general plan for the physical development of the city and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning; and
- WHEREAS,** Section 65301 of the California Government Code provides the legislative body the opportunity to adopt a general plan in any format deemed appropriate or convenient including combining required elements; and
- WHEREAS** The City's existing 2008 Housing Element shall remain in full force and effect and is not part of this general plan update; and
- WHEREAS** The Planning Commission and the General Plan Steering Committee provided numerous opportunities for involvement in the planning process by citizens, California Native American Indian tribes, public agencies, public utility companies, and civic education, and other community groups, through public hearings, workshops, public meetings and electronic posting of pertinent material and information on the City's Website; and
- WHEREAS** The Planning Commission caused the draft General Plan 2012-2030 Update to be referred to the appropriate agencies as set forth in Section 65352 of the California Government Code; and
- WHEREAS** The Planning Commission held duly noticed hearings on July 24, 2013 and August 28, 2013; and
- WHEREAS** At the conclusion of the public hearings, the Planning Commission adopted its Resolution No. 13-226.PC recommending that the City Council adopt a comprehensive General Plan 2012-2030 Update dated May 28, 2013 that includes six of the seven mandated general plan elements plus a climate action plan as well as adopt the EIR Addendum for the General Plan 2012-2030 Update; and
- WHEREAS** After the Planning Commission's review and recommendation, staff made non-substantive revisions to the General Plan 2012-2030 Update to make clear that there

was no change to the development potential of the 302 acres in the northern portion of the City from what existed under the 2007 General Plan.

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BRADBURY DOES  
HEREBY RESOLVE, FIND, AND DETERMINE AS FOLLOWS:**

- SECTION A.** The City Council finds that a public hearing has been conducted on **November 19, 2013** in accordance with the provisions of State Law and the Municipal Code relative to this matter. The City Council considered all information presented to it, both written and oral, and such information provides the basis for the City Council's decisions and findings herein.
- SECTION B.** The City Council declares that the information set forth in the May 28, 2013 draft of the General Plan 2012-2030 Update, the associated staff report and testimony given at the public hearing, as well as the information before the Planning Commission, are incorporated in this resolution and comprise the basis upon which the findings and decision have been made.
- SECTION C.** The City Council finds that the City's Housing Element 2008 is not part of this project. And has not been updated, but has been included in the draft General Plan 2012-2030 Update by reference. The City's Housing Element was adopted in 2008 and certified as being in compliance with the laws and guidelines of the State of California. The schedule for updating the Housing Element is different than that of the remaining general plan elements.
- SECTION D.** The City Council determines that the Revised May 28, 2013 draft General Plan 2012-2030 Update contains the following required elements: Land Use, Circulation, Open-Space, Conservation, Noise, and Safety, as well as a Climate Action Plan prepared in accordance with the provisions of the State Planning Law and the State General Plan Guidelines.
- SECTION E.** The City Council finds that an extensive program of public participation was devised and implemented to ensure that all residents and interested parties have been informed of the City's intent to update its general plan and that they were provided ample opportunity to participate and comment on the preparation of the draft general plan update.
- SECTION F.** The City Council finds that the draft General Plan 2012-2030 Update as recommended by the Planning Commission, and the Revised version presented to the City Council, is based on the land use patterns established by the 1994 General Plan and the subsequent 2007 review of that plan. Data in the General Plan 2012-2030 Update has been reviewed and revised to reflect demographic changes made to the City within the past 19 to 20 years. The proposed Revised General Plan Update has been written to be more consistent with the State adopted General Plan Guidelines and that a Climate Action Plan has been added to the General Plan in response to direction provided by the State of California.
- SECTION G.** The City Council finds that the City of Bradbury adopted a comprehensive General Plan in 1994 and that as part of that adoption process the City Council certified an Environmental Impact Report SCH 93-101-038 (FEIR) for the project. In 2007 the City Council reviewed the 1994 General Plan and found that the goals, objectives, policies and land use patterns were still relevant and appropriate for the community.

**SECTION H.** The City reviewed the project and prepared Addendum No. 1 to the FEIR in accordance with CEQA and the CEQA Guidelines. The Addendum is dated, August 2013 and is incorporated by reference.

1. None of the conditions in CEQA Guidelines § 15162 requiring a subsequent or supplemental EIR are present. No new significant effects will result from the Revised General Plan 2012-2030 Update. No effects previously examined will be substantially more severe than shown in the FEIR in accordance with CEQA Guidelines §15164(a).

2. None of the revisions made to the General Plan Update would trigger a need to re-examine any of the analysis set forth in the Addendum. The changes do not change development potential of any land area within the City and do not create any additional impacts that were not previously analyzed as all changes are non-substantive in nature.

3. The Addendum was not circulated for public review, but will be included in or attached to the FEIR in accordance with CEQA Guideline § 15164(c).

4. In accordance with CEQA Guidelines § 15164(e), the Addendum includes an explanation of the decision to use an Addendum and the explanation is supported by substantial evidence.

5. The Addendum reflects the independent judgment and analysis of the City. The Addendum is an accurate and complete statement of the environmental impacts of the Revised General Plan 2012-2030 Update.

6. The City Council hereby approves and adopts the Addendum No. 1 to the 1994 General Plan FEIR.

1. **SECTION I.** With regard to the issues raised by Alvarado Smith on behalf of their clients the City Council specifically finds that there is no change to the development opportunities relating to the 302 hillside acres which includes their clients' 192-acres. Although the land use designation has been given the new name of "Open Space, Privately Owned Undeveloped" from "Estate 5 Acre/Hillside Development Overlay," the property remains zoned A-5 (SP) and can be developed with up to one unit per 5 acres or as may be modified in accordance with the provisions of Chapter 9.06.020 (Hillside Development Standards) of the City's Zoning Code. The new General Plan Land Use Designation merely replaces the previous designation without any substantive change. The General Plan Update's continued recognition of the difficulties of developing this site does not preclude development. As outlined in the City Attorney's letter and the staff report, the Revised General Plan 2012-2030 Update specifically recognizes that development is allowed in the area.

**SECTION J.** The City Council hereby approves and adopts the General Plan 2012-2030 Update dated May 28, 2013 Revised, as presented.

**SECTION K.** The entire record on which the City Council's actions are based is located at the Planning Department at the City of Bradbury 600 Winston Avenue, Bradbury, CA 91008.

**SECTION L.** The City Clerk shall certify to the adoption of this resolution.

**PASSED APPROVED AND ADOPTED this 19th day of November 2013.**

\_\_\_\_\_  
Richard Pycz, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Claudia Saldana, City Clerk, hereby certify that the foregoing **Resolution No. 13-\_\_\_\_**. CC was duly adopted by the City Council of the City of Bradbury, California at a regular meeting held on the **19th day of November 2013** by the following vote:

<b>AYES:</b>	City Council Members:
<b>NOES:</b>	City Council Members:
<b>ABSTAIN:</b>	City Council Members:
<b>ABSENT:</b>	City Council Members

**RESOLUTION NO. 13-226. PC**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY BRADBURY, CALIFORNIA SETTING FORTH ITS  
FINDINGS OF FACT AND RECOMMENDATION RELATIVE TO**

**GENERAL PLAN AMENDMENT NO. GPA 13-01  
GENERAL PLAN 2012-2030 UPDATE**

**WHEREAS,** The Planning Commission considered a draft comprehensive General Plan 2012-2030 Update prepared by the Bradbury General Plan Steering Committee which established the City's long-range vision, development goals, objectives and policies.

**WHEREAS,** The State Planning Law and the Municipal Code of the City of Bradbury provides that the Planning Commission shall announce its findings and recommendations relative to all matters of relevance to the City's long-range planning.

**NOW, THEREFORE THE PLANNING COMMISSION OF THE CITY OF BRADBURY DOES HEREBY  
RESOLVE, FIND, DETERMINE AND RECOMMENDS AS FOLLOWS:**

**SECTION A.** The Planning Commission finds that a public hearing has been conducted on **July 24, 2013** and **August 28, 2013** in accordance with the provisions of State Law and the Municipal Code relative to this matter.

**SECTION B.** The Planning Commission declares that the information set forth in the May 28, 2013 draft General Plan 2012-2030 Update, the associated staff report and testimony given at the public hearing are incorporated in this resolution and comprise the basis upon which the findings and recommendations have been made.

**SECTION C.** The Planning Commission finds that the City's Housing Element 2008 has been included in the draft General Plan 2012-2030 by reference.

**SECTION D.** The Planning Commission determines that the draft General Plan 2012-2030 Update contains the following required elements: Land Use, Circulation, Open-Space, Conservation, Noise, Safety and Climate Action prepared in accordance with the provisions of the State Planning Law and the State General Plan Guidelines.

**SECTION E.** The Planning Commission finds that an extensive program of public participation was devised and implemented to ensure that all residents and interested parties have been informed of the City's intent to update its general plan and that they were provided ample opportunity to participate and comment on the preparation of the draft general plan update.

**SECTION D.** The Planning Commission finds that the draft General Plan 2012-2030 Update as recommended by the City's General Plan Steering Committee is based on the land use patterns established by the 1994 General Plan and the subsequent 2007 review of that plan. Data in the General Plan 2012-2030 Update has been reviewed and revised to reflect changes made to the City within the past 19 to 20 years. The proposed General Plan has been rewritten to be more consistent with the State adopted General Plan Guidelines and that a Climate Action Plan has been added to the General Plan in response to direction provided by the State of California.

**SECTION E.** The Planning Commission recommends that the City Council find that the City of Bradbury adopted a comprehensive General Plan in 1994 and that as part of that adoption process the City Council certified an Environmental Impact Report (EIR) for the project. In 2007 the City Council reviewed the 1994 General Plan and found that the

goals, objectives, policies and land use patterns were still relevant and appropriate for the community.

The required General Plan Housing Element is not part of this project. The City's Housing Element was adopted in 2008 and certified as being in compliance with the laws and guidelines of the State of California. The schedule for updating the Housing Element is different than that of the remaining general plan elements.

The Planning Commission has reviewed and recommends adoption of the land use patterns which were established by the 1994 General Plan and the subsequent 2007 review of the plan. Data in the General Plan 2012-2030 Update has been reviewed and revised to reflect changes made to the City within the past 19 to 20 years. The proposed General Plan has been rewritten to be more consistent with the State adopted General Plan Guidelines. A Climate Action Plan has been added to the General Plan in response to direction provided by the State of California.

**SECTION F.** The Planning Commission is of the opinion that the environmental impacts that may be caused by the proposed General Plan 2012-230 Update have been thoroughly analyzed and mitigated by the 1993 EIR. No significant effects have been identified that have not previously been analyzed in the certified EIR. An Addendum to the General Plan base EIR has been prepared to demonstrate pursuant to CEQA Guidelines Section 15162 that the circumstances, impacts and mitigation measures identified in the 1993 City of Bradbury General Plan Draft and Final EIR remain substantively unchanged in the 2012-2030 Bradbury General Plan Update. In addition, the Addendum supports the finding that the 2012-2030 General Plan Update does not raise any new issues and does not cause the level of impacts identified in the previous EIR to be exceeded.

In accordance with the provisions of Section 15164 of the California Environmental Quality Act (CEQA) Guidelines the Planning Commission is recommending that the City Council approve and adopt an Amendment to the 1993 General Plan EIR and that this action will satisfy the environmental review requirements for this project.

**SECTION G.** The Planning Commission hereby recommends that the City Council approve and adopt the General Plan 2012-2030 Update dated May 28, 2013.

**SECTION H.** The City Clerk shall certify to the adoption of this resolution.

**PASSED APPROVED AND ADOPTED this 28th day of August 2013.**

\_\_\_\_\_  
Susan Esparza, Vice Chairperson

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Claudia Saldana, City Clerk, hereby certify that the foregoing **Resolution No. 13-226. PC** was duly adopted by the Planning Commission of the City of Bradbury, California at a regular meeting held on the **28th day of August 2013** by the following vote:

<b>AYES:</b>	Commissioners:	Hernandez, Novodor and Esparza
<b>NOES:</b>	Commissioners:	None
<b>ABSTAIN:</b>	Commissioners:	None
<b>ABSENT:</b>	Commissioners:	Kuba and Dunst

City Council Report

General Plan 2012-2030 Update

**EXHIBIT "F"**

Alvarado Smith Letter

August 28, 2013

Objections to the adoption of  
The Bradbury General Plan 2012-2030 Update



A PROFESSIONAL CORPORATION  
INCLUDING PROFESSIONAL CORPORATIONS

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Raymond G. Alvarado,  
Retired

August 28, 2013

**VIA FACSIMILE AND HAND DELIVERY**

Honorable Planning Commission  
City of Bradbury  
600 Winston Ave.  
Bradbury, CA 91008

**ATTACH THIS LETTER AS PART OF THE PUBLIC RECORD OF THE PLANNING COMMISSION'S AUGUST 28, 2013, REGULAR MEETING TO DISCUSS THE CITY OF BRADBURY'S, ("CITY"), PROPOSED GENERAL PLAN 2012-2030 UPDATES**

Honorable Members of the Planning Commission:

This office and the undersigned represent D&M Investments, Inc., ("DM"), the owner of 192-acres located within the 302-acre site that the General Plan-2012-2030, Community Resources Element, Draft, ("General Plan Update") seeks to reserve for hillside preservation and open space, in direct contravention to the existing and legally permitted "A-5" land use designation currently in place via the General Plan, 2007. The General Plan Update does not "update" the General Plan, 2007, but rather attempts to eviscerate the binding "A-5" land use designation, based entirely on unsubstantiated conclusions for which no study or analysis is presented. The manifest change from an "A-5" land use designation to a hillside preservation/open space one must be preceded by a *California Environmental Quality Act*, ("CEQA"), study, more particularly, an Environmental Impact Report, ("EIR"), given the significance of the proposed land use change. The General Plan, 2007's "A-5" land use designation controls, and any land use change would be significant by definition, thereby warranting an independent CEQA analysis in support thereof. For these reasons, DM opposes any City attempt to adopt the General Plan Update as any such decision would be arbitrary, capricious, and lacking in evidentiary support.

All cities and counties in California must develop and approve a general plan. *Government Code* section 65300, 65302. The general plan is a "constitution" for future developments within the city or county and the propriety of virtually any local land use and development decision depends upon its consistency with the applicable general plan. [*Government Code* section 65300.5, 65454-specific plan must be consistent with general plan]; [*Corona-Norco Unified School District v. City of Corona*, 17 Cal.App.4<sup>th</sup> 985, 994-consistency

Honorable Planning Commission  
City of Bradbury  
August 28, 2013  
Page 2

doctrine is the linchpin of California land use and development laws]. General Plan, 2007, currently designates DM's 192-acre parcel under an "A-5" land use designation, "...characterized by single-family residential development on larger lots...permitted density within this zone ranges from one dwelling unit per five acres and up."

The proposed General Plan "Update" recitation of the current land use designation as hillside preservation is a complete misnomer; it is entirely inconsistent with the General Plan, 2007's "A-5" land use designation. Additionally, the General Plan Update seeks to justify its land use designation change from "A-5" to "hillside preservation area/open space," based entirely on unsupported conclusions that: "environmental constraints may be so severe that development of this area, [302-acres], may not be realistic. This area has been designated for hillside preservation." See, General Plan, Update, Hillside Preservation Area, page 3. Clearly, the General Plan, 2007 continues to designate D&M's 192-acre parcel under its "A-5" designation, and there is no evidence-no study, no analysis-presented in the General Plan Update that proves that any portion of the 302-acres had been "designated for hillside preservation." Rather, all of the 302-acres continues to appear designated under an "A-5" land use characterization.

Moreover, the General Plan Update does not cite to or incorporate any study or analysis to support its many environmental, biological, or geological conclusions that "environmental constraints may be so severe that development of this area, [302-acres], may not be realistic." Here are but a few examples of the bald, unsubstantiated conclusions that are put forth as fact to justify eviscerating the current, legal "A-5" land use designation upon D&M's property.

- The "steep hillsides areas are considered ecologically significant due to their vacant state and the presence of native vegetation." See, General Plan Update, High Sensitivity, page 12;
- The 302-acres are noted as "deemed to be physically and economically infeasible" for development. See, General Plan Update, Resource Management Areas, page 13.
- "Abundant wildlife either reside in this area, [302-acres], or transverse the area in search of food and shelter." See, General Plan Update, Hillside Preservation Areas, page 3.
- "Approximately 356-acres...either prohibit development or is considered infeasible for development activity." See, General Plan Update, Resource Management Areas, page 13.

None of these statements are supported by empirical studies or reliable data.



Honorable Planning Commission  
City of Bradbury  
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The City's reliance on the alleged significance of its environmental, biological, and geologic conclusions confirms the need for a CEQA study, an EIR in particular. The adoption and amendment of general plans and their elements are projects within the meaning of CEQA. *California Code of Regulations* tit. 14, section 15378(a)(1). The City's meaningful and complete departure from the legally permitted "A-5" land use designation must be preceded by a CEQA, EIR analysis, given the "significance" of the many environmental issues the City puts forth to justify its General Plan Update. The City has not conducted an EIR analysis of its General Plan since 1993. The City's August 2013, Environmental Impact Report, Addendum, does not address the planned development of the 302-acres, does not address the purported hillside/open space "project," and does not address any of the General Plan Update's alleged environmental, biological, and geologic factual conclusions.

A CEQA study is also warranted as D&M has never been afforded any opportunity to comment on any aspect of the General Plan Update's purported "conclusions and findings." D&M has the legal right to participate, as a member of the public, in any City sponsored hillside preservation/open space EIR analysis that it wishes to conduct in the future. Otherwise, the General Plan, 2007's "A-5" land use designation controls and D&M will take all appropriate legal action to protect this binding land use designation on property it lawfully owns.

Very truly yours,

ALVARADO SMITH  
A Professional Corporation

A handwritten signature in cursive script that reads 'Thierry R. Montoya'.

Thierry R. Montoya

TRM:dh

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "G"**

Alvarado Smith Letter

August 30, 2013

Appeal of the Planning Commission's  
Recommendation to Adopt  
The Bradbury General Plan 2012-2030 Update



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 Santa Ana, California 92707  
 Phone: 714.852.6800  
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 www.AlvaradoSmith.com

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Los Angeles  
 213.229.2400

San Francisco  
 415.624.8665

Thierry R. Montoya  
 (714) 852-6800  
 tmontoya@AlvaradoSmith.com

Raymond G. Alvarado,  
 Retired

August 30, 2013

**VIA FACSIMILE AND MAIL DELIVERY**

City Clerk  
 City of Bradbury  
 600 Winston Ave.  
 Bradbury, CA 91008

RECEIVED SEP 10 2013

**APPEAL OF PLANNING COMMISSION'S AUGUST 28, 2013 DECISION TO RECOMMEND TO THE CITY COUNCIL ITS ADOPTION OF THE CITY OF BRADBURY'S, ("CITY"), PROPOSED GENERAL PLAN 2012-2030 UPDATES**

City Clerk:

This office and the undersigned represent D&M Investments, Inc., ("DM"), the owner of 192-acres located within the 302-acre site that the General Plan-2012-2030, Community Resources Element, Draft, ("General Plan Update") seeks to reserve for hillside preservation and open space, in direct contravention to the existing and legally permitted "A-5" land use designation currently in place via the General Plan, 2007. Pursuant to Development Code Administration, Chapter 9.02.050-Appeals, please accept this as DM's appeal to the Planning Commission's August 28, 2013 decision to grant the General Plan Update over DM's written and oral objections. The City's Appeals rule does not identify any appeal fee. If such is required, please immediately advise of such for payment. DM's arguments are, again, set forth for the City Council's consideration.

The General Plan Update does not "update" the General Plan, 2007, but rather attempts to eviscerate the binding "A-5" land use designation, based entirely on unsubstantiated conclusions for which no study or analysis is presented. The manifest change from an "A-5" land use designation to a hillside preservation/open space one must be preceded by a *California Environmental Quality Act*, ("CEQA"), study, more particularly, an Environmental Impact Report, ("EIR"), given the significance of the proposed land use change. The General Plan, 2007's "A-5" land use designation controls, and any land use change would be significant by definition, thereby warranting an independent CEQA analysis in support thereof. For these reasons, DM opposes any City attempt to adopt the General Plan Update as any such decision would be arbitrary, capricious, and lacking in evidentiary support.

///

City Clerk  
City of Bradbury  
August 30, 2013  
Page 2

All cities and counties in California must develop and approve a general plan. *Government Code* section 65300, 65302. The general plan is a "constitution" for future developments within the city or county and the propriety of virtually any local land use and development decision depends upon its consistency with the applicable general plan. [*Government Code* section 65300.5, 65454-specific plan must be consistent with general plan]; [*Corona-Norco Unified School District v. City of Corona*, 17 Cal.App.4<sup>th</sup> 985, 994-consistency doctrine is the linchpin of California land use and development laws]. General Plan, 2007, currently designates DM's 192-acre parcel under an "A-5" land use designation, "...characterized by single-family residential development on larger lots...permitted density within this zone ranges from one dwelling unit per five acres and up."

The proposed General Plan "Update" recitation of the current land use designation as hillside preservation is a complete misnomer; it is entirely inconsistent with the General Plan, 2007's "A-5" land use designation. Additionally, the General Plan Update seeks to justify its land use designation change from "A-5" to "hillside preservation area/open space," based entirely on unsupported conclusions that: "environmental constraints may be so severe that development of this area, [302-acres], may not be realistic. This area has been designated for hillside preservation." See, General Plan, Update, Hillside Preservation Area, page 3. Clearly, the General Plan, 2007 continues to designate D&M's 192-acre parcel under its "A-5" designation, and there is no evidence-no study, no analysis-presented in the General Plan Update that proves that any portion of the 302-acres had been "designated for hillside preservation." Rather, all of the 302-acres continues to appear designated under an "A-5" land use characterization.

Moreover, the General Plan Update does not cite to or incorporate any study or analysis to support its many environmental, biological, or geological conclusions that "environmental constraints may be so severe that development of this area, [302-acres], may not be realistic." Here are but a few examples of the bald, unsubstantiated conclusions that are put forth as fact to justify eviscerating the current, legal "A-5" land use designation upon D&M's property.

- The "steep hillsides areas are considered ecologically significant due to their vacant state and the presence of native vegetation." See, General Plan Update, High Sensitivity, page 12;
- The 302-acres are noted as "deemed to be physically and economically infeasible" for development. See, General Plan Update, Resource Management Areas, page 13.
- "Abundant wildlife either reside in this area, [302-acres], or transverse the area in search of food and shelter." See, General Plan Update, Hillside Preservation Areas, page 3.

City Clerk  
City of Bradbury  
August 30, 2013  
Page 3

- “Approximately 356-acres...either prohibit development or is considered infeasible for development activity.” See, General Plan Update, Resource Management Areas, page 13.

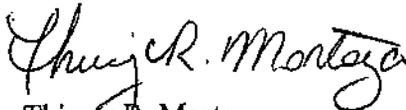
None of these statements are supported by empirical studies or reliable data. This was again confirmed by record of the Planning Commission's August 28, 2013 hearing, where no studies or reliable data was presented-at all.

The City's reliance on the alleged significance of its environmental, biological, and geologic conclusions confirms the need for a CEQA study, an EIR in particular. The adoption and amendment of general plans and their elements are projects within the meaning of CEQA. *California Code of Regulations* tit. 14, section 15378(a)(1). The City's meaningful and complete departure from the legally permitted “A-5” land use designation must be preceded by a CEQA, EIR analysis, given the “significance” of the many environmental issues the City puts forth to justify its General Plan Update. The City has not conducted an EIR analysis of its General Plan since 1993. The City's August 2013, Environmental Impact Report, Addendum, does not address the planned development of the 302-acres, does not address the purported hillside/open space “project,” and does not address any of the General Plan Update's alleged environmental, biological, and geologic factual conclusions.

A CEQA study is also warranted as D&M has never been afforded any opportunity to comment on any aspect of the General Plan Update's purported “conclusions and findings.” D&M has the legal right to participate, as a member of the public, in any City sponsored hillside preservation/open space EIR analysis that it wishes to conduct in the future. Otherwise, the General Plan, 2007's “A-5” land use designation controls and D&M will take all appropriate legal action to protect this binding land use designation on property it lawfully owns.

Very truly yours,

ALVARADOSMITH  
A Professional Corporation

  
Thierry R. Montoya

TRM:dh

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "H"**

City Attorney's Letter  
to Alvarado Smith Clarifying General Plan Issues

September 16, 2013

WALLIN, KRESS, REISMAN & KRANITZ, LLP  
LAW OFFICES  
2800 TWENTY-EIGHTH STREET, SUITE 315  
SANTA MONICA, CALIFORNIA 90405-6206  
TELEPHONE (310) 450-9582  
FACSIMILE (310) 450-0506

September 16, 2013

Thierry R. Montoya  
Alvarado Smith  
1 MacArthur Place, Suite 200  
Santa Ana, California 92707

Re: General Plan Issues

Dear Mr. Montoya:

This letter addresses the issues raised in your August 28, 2013 letter with regard to the General Plan designation of property owned by your client, D&M Investments, Inc. ("DM") within the 302 acres (the "Property") which is proposed to be designated as Open Space, Hillside Preservation. The purpose of this letter is to assure you and your clients that despite the name change of the land use designation, there are absolutely no changes being proposed that would change the development opportunities between what exists under the current 2007 General Plan ("Current Plan") land use designation and what is proposed for the 2012 - 2020 General Plan Update ("Update"). It should be noted that the Current Plan was essentially a readoption of the 1993 General Plan.

The Addendum which has been prepared for the Update states, both in the "Findings and Conclusions" section as well as the "Project Description," that the Update does not propose any changes in existing land use or development patterns. There is nothing in the goals and policies that are being adopted which prohibits development of the Property; in fact, Goal 8 of the Conservation Element specifically recognizes that development will occur where it states: "Ensure that development in the steep foothill area is sensitive to the local environment."

The basic assertions of your letter, i.e., that the City is changing the land use designation and prohibiting development, seems to stem from a misunderstanding of the difference between a General Plan land use designation and zoning. All properties have both a land use designation, which is set forth in the Land Use Element of the General Plan, and a zoning designation; the zoning must be consistent with the General Plan.

Under the Current Plan, the Property is designated as being in the Hillside Development Overlay area of the Estate 5 Acre land use designation. The Current Plan also places the Property in a Resource Management Overlay area and a Safety Management Overlay area. The Current Plan specifically recognizes that the A-5 zoning is consistent with the Estate 5 Acre land

Thierry R. Montoya  
September 16, 2013  
Page 2

use designation and that any development in the Hillside Development Overlay area will have to comply with the hillside development standards. In addition to the A-5 land use designation, the Property also has a "Specific Plan Overlay" zoning designation.

Therefore, under the existing General Plan land use designation and zoning, the following requirements would apply in order to develop the Property:

- Compliance with Chapter 9.05.060 (A-5 – Agriculture Residential Estate Zoning District) of the City's Development Code
- Compliance with Chapter 9.05.080 (SP – Specific Plan Overlay Zoning District) of the City's Development Code - which allows an applicant to develop standards that differ from the Development Code if it will result in a project which better protects sensitive areas
- Compliance with Chapter 9.06.020 (Hillside Development Standards) of the City's Development Code
- Ecological resource review pursuant to the Conservation Element, including field surveys and on-site vegetation reviews
- Compliance with standards for development in the Safety Management Overlay area pursuant to the Safety Element

A review of the proposed Update shows that nothing has changed and development of the Property would be subject to the same requirements.

The proposed Land Use Element changes the *name* of the land use designation from "Estate 5 Acre/Hillside Development Overlay" to "Open Space, Hillside Preservation." While the Update indicates that development in this area is considered to be physically and economically infeasible and therefore assigns no growth to this area, there is nothing in the Update which prohibits development and the A-5 zoning designation is recognized as the zoning for the Property. As set forth above, Conservation Goal 8 specifically recognizes the possibility of development, as do other provisions of the Update. Similarly, Land Use Goal 2 recognizes development potential in providing that the Hillside Development Standards should apply and the Housing Element provides for potential development of 30 units in the area.

As the zoning of the Property is not changing, development will still require compliance with the A-5 zone and the Hillside Development Standards, with the ability to use a Specific Plan to develop different standards if it will better protect the environment. The proposed Conservation Chapter of the Community Development Element contains the same guidelines for the Property, with a few additional changes relating to cultural and historic resources. And the proposed Safety Chapter of the Health and Safety Element continues to recognize the Property as being in a high fire hazard area that is subject to earthquake induced landslides.

Thierry R. Montoya  
September 16, 2013  
Page 3

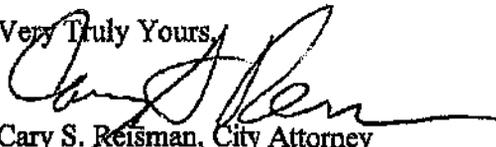
Your letter includes excerpts from the Update for which you allege there is no evidence. However, the statements from the Update are not new and are included within the Current Plan, which was supported by an EIR. These allegations are addressed in the attachment to this letter. However, two other statements made in your letter are required to be addressed herein.

First, you allege that the City is attempting to change the "binding" A-5 land use designation. Not only is this untrue, because A-5 is the zoning and not the land use designation, it should be noted that neither the land use designation nor the zoning of property is "binding" until vested rights have been obtained. As your client has not obtained any development approvals, it has no vested rights.

Second, you assert that the General Plan Update must be subject to CEQA study, more particularly an EIR. This conclusion is also incorrect. While there is no doubt that the Update is a project under CEQA, this does not mean that an EIR is required. An EIR is required only when there is substantial evidence to support a claim that there is a significant effect which has not or cannot be mitigated. Once an EIR has been prepared for a project, no additional environmental review is required unless there are changes in the project or changes in the circumstances which create new significant environmental effects, or there are new mitigation measures which could now be implemented. An EIR was prepared for the 1993 General Plan. The 2007 General Plan was essentially a readoption of the 1993 General Plan. Similarly, the proposed 2013 Update is also a basic readoption of the land use development patterns set forth in the 1993 General Plan; therefore there are no changed circumstances or new environmental effects which would necessitate the preparation of an EIR.

We hope this letter eliminates the concern that changes are being made which would impact your client's ability to develop the Property. Please be advised the City Council will be considering the Update at a public hearing in November 2013. Please be further advised that the 2007 General Plan, 2008-2014 Housing Element, and the zoning Map can all be found on the City's website and are incorporated herein by reference.

Very Truly Yours,



Cary S. Reisman, City Attorney  
Lisa E. Kranitz, Assistant City Attorney

cc: Mayor and City Council  
Michelle Keith, City Manager

General Plan Evidence Re: DM's Allegations

<b>Allegation</b>	<b>2007 General Plan Evidence to the Contrary</b>
<p>No evidence that the Property had been designated for hillside preservation in the 2007 General Plan</p>	<ul style="list-style-type: none"> <li>• General Plan Update, p. 3 – description of Hillside Overlay as being the northernmost third of the City and subject to requirements of the Hillside Ordinance</li> <li>• General Plan Update, p. 4 – map showing Property in Hillside Development Overlay</li> <li>• Land Use Element, p. 2-1 – northern one-third of City consisting of hillsides</li> <li>• Land Use Element – Table 2-2, p. 2-5 – Estate 5 acre designation in Hillside Overlay zone must comply with hillside development standards</li> <li>• Land Use Element, p. 2-5 – northernmost third of City is subject to Hillside Ordinance</li> <li>• Land Use Element – Table 2-3, p. 2-6 – 316 acres in Estate 5 Acre subject to hillside development standards</li> <li>• Land Use Element, p. 2-7 – vacant parcels in hillside areas subject to hillside development standards</li> </ul>
<p>No evidence to support that there are environmental constraints that may inhibit development (includes allegations regarding native vegetation and wildlife)</p>	<ul style="list-style-type: none"> <li>• Land Use Element, pp. 2-1, 2-3 – northern one-third of City is bisected by intermittent streams</li> <li>• Land Use Element, p. 2-5 – recognizes that Conservation Element has identified High Sensitivity area due to cultural/ecological sensitivity and significant ridgelines that warrant preservation</li> <li>• Land Use Element, p. 2-6 – recognizes that Safety Element has identified Safety Management Overlay area for areas subject to wildfire and surface rupture</li> <li>• Open Space Element – Table 4-1, p. 4-2 – 331 acres of vacant land is undeveloped hillside subject to environmental constraints</li> <li>• Conservation Element, pp. 5-4 – 5-5 - identifies biological resources</li> <li>• Conservation Element, p. 5-7 – Hillside areas are listed as being in a High Sensitivity Area which are ecologically significant due to their vacant state and presence of native vegetation</li> <li>• Conservation Element, pp. 5-7 – 5-8 – development guidelines set forth for development in the high sensitivity areas</li> <li>• Conservation Element – Exhibit 5-1 – shows Property as being in wildlife habitat resource management area</li> <li>• Safety Element – Exhibit 6-2 – shows Property in hillside/slope failure area</li> </ul>

	<ul style="list-style-type: none"> <li>• Safety Element, p. 6-12 – steep slopes (40 – 50%) at extreme risk for wildfire; slopes of 20 – 40% at high risk for wildfire</li> <li>• Safety Element – Exhibit 6-3 – Property within Safety Management Overlay area</li> <li>• Housing Element (2008-2014), pp. 17-18 – recognizes that build-out estimate of 501 dwelling units is not realistic because of environmental constraints</li> <li>• Addendum, p. 3-6 – in describing the biological resources the Addendum cites to the Draft EIR and Initial Study for the 1993 General Plan</li> </ul>
<p>No evidence to support that development is deemed physically and economically infeasible</p>	<ul style="list-style-type: none"> <li>• Land Use Element, p. 2-5 – Estate 5 acre designation in Hillside Overlay zone must comply with hillside development standards which is likely to lower development potential</li> <li>• Land Use Element, p. 2-7 – vacant parcels in hillside areas present constraints to development and actual number of units are likely to reflect less development than what is permitted</li> <li>• Open Space Element, p. 4-1 – large undeveloped areas of City not suitable for development because they feature steep slopes or serve as water drainage courses; although much of land best serves as open space, the remain undeveloped at property owner’s discretion</li> <li>• Housing Element (2008-2014), pp. 17-18 – recognizes that build-out estimate of 501 dwelling units is not realistic because of environmental constraints</li> <li>• Housing Element (2008-2014), p. 20 – portion of City with larger lots located in hillside and mountainous areas making high-density development difficult</li> </ul>

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT "I"**

Alvarado Smith Letter

October 28, 2013



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Raymond G. Alvarado,  
Retired

RECEIVED OCT 30 2013

October 28, 2013

VIA U.S. MAIL ONLY

Cary S. Reisman  
CITY ATTORNEY  
WALLIN, KRESS, REISMAN  
& KRANITZ, LLP  
2800 Twenty-Eight Street, Suite 315  
Santa Monica, California 90405-6205

**ATTACH THIS LETTER AS PART OF THE PUBLIC RECORD OF THE CITY  
COUNCIL'S NOVEMBER 19, 2013, HEARING TO TAKE PUBLIC COMMENT ON  
THE CITY OF BRADBURY'S, ("CITY"), PROPOSED GENERAL PLAN 2012-2030  
UPDATE ("Update").**

Dear Mr. Reisman:

This office and the undersigned represent D&M Investments, Inc., ("DM"), the owner of 192-acres located within the 302-acre site that the Update seeks to reserve for hillside preservation and open space, in direct contravention to the existing land use and zoning designation that permits our client to develop the property for residential usage. Responding to your September 16, 2013 letter, you assert the Update is appropriate for a mere addendum review under the *California Environmental Quality Act* ("CEQA"), as the Update is a "readoption of the land use development patterns set forth in the 1993 General Plan; therefore there are no changed circumstances or new environmental effects which would necessitate the preparation of an EIR."

Your letter further states that: "the proposed Land Use Element changes the *name* of the land use designation from 'Estate 5 Acre/Hillside Development Overlay' to 'Open Space, Hillside Preservation.'" [Emphasis in original.] You assert that this poses an insignificant change that you allege has no bearing on our client's ability to develop its property pursuant to the existing 1993 General Plan's "Estate (Hillside)-5 acre" land use element with a corresponding "A-5" zoning designation. Your assertion begs the question: what's in a name? Quite a bit, as it turns out, since "Development" and "Preservation" are mutually exclusive terms and, as borne out by the City's documents, the Update proposes to change the 1993 General Plan's land use element and zoning designation affecting my client's property from:

Cary S. Reisman  
CITY ATTORNEY  
October 28, 2013  
Page 2

“Estate (Hillside)-5 acre” land use element with a corresponding “A-5” zoning, to “General Plan-Open Space-Undeveloped; Zoning –A-5 (SP), Agriculture Residential Estate-Specific Plan.” (City of Bradbury General Plan Update Background Report April 2012, 2.4 Existing Land Use and Zoning, Chapter II-5 through Chapter II-20.) This land use and zoning change is the mechanism through which the City will eviscerate my client’s right to develop its property from the EIR’s “theoretical buildout under the land use plan [of] 32 units...” to an entirely inconsistent land use designation of: “Open Space, Hillside Preservation-Privately owned area considered as physically and economically infeasible for residential development.” (City of Bradbury General Plan -2012-2030, Land Use Element-Draft-August 23, 2012.)

The Update’s land use element and zoning designation changes have never been studied, are entirely inconsistent with the 1993 General Plan and the EIR that supported it, and cannot, under CEQA, be approved by the City Council on an addendum basis. It would be an abuse of discretion, therefore, for the City Council to adopt the Update at its November 19, 2013 meeting as the significant land use element and zoning designation proposed, i.e., “Open Space, Hillside Preservation” land use element with a corresponding “A-5 (SP)” designation, could only be considered by the City’s Planning Commission and then the City Council, following the preparation of a supplemental EIR meeting the strictures of CEQA. (*California Public Resources Code* sections 21080(d), 21082.2(d), 21082.2(d); *CEQA Guidelines* section 15064(f)(1); *Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4<sup>th</sup> 1288, 1300.)

### **1993 General Plan and EIR**

The existing land uses within the City are identified in the 1993 General Plan’s Land Use Element, Section 2. As explained on 2-4 through 2-5, and Table 2-2, our client’s property maintains a “land use category” of “Estate (Hillside) – 5 acres, with a “corresponding zoning” of “A-5.” The “Estate 5 acre designation located in the Hillside overlay zone must comply with hillside development standards which is likely to lower development potential because of topographic constraints and those standards designed to address those constraints.” (1993 General Plan’s Land Use Element, Section 2, Table 2-2, fn 1.) Table 2-2 also identifies the intensity (1 unit/5 acres) and density standards (3 persons/5 acres) for this corresponding zoning designation. (1993 General Plan’s Land Use Element, Section 2, Table 2-2.)

Table 2-3 (1993 General Plan’s Land Use Element, Section 2-6) sets forth the “theoretical buildout under the land use plan,” in pertinent part:

Cary S. Reisman  
 CITY ATTORNEY  
 October 28, 2013  
 Page 3

<u>Land Use Category</u>	<u>Area-In Acres</u>	<u>No. of Units</u>	<u>No. of Persons</u>
Estate – 5 acre	316	32	95

Section 2-7 addresses the likelihood of construction within this designated area: “The majority of vacant parcels (especially the five-acre lots) are located in hillside areas that present a number of constraints to development. As a result, the actual number of units, after the hillside development standards are imposed, are likely to reflect less development than what is actually permitted under the zoning. For purposes of analysis, however, the vacant land inventory will serve as a benchmark in calculating future development potential City wide.”

Table 2-3 is identical to what was studied in the General Plan EIR back in 1993. (Draft EIR, 3-6.) The EIR concluded that the “implementation of the Land Use Plan is not anticipated to result in any adverse impacts on land use...[with mitigation measures of] Land Use Element Policy; Housing Policy; and Open Space Element Policy.” (Draft EIR, 3-7.) These mitigation measures “are designed to prevent adverse impacts on land.” (Draft EIR, 3-8.)

The Land Use Element, Housing, and Open Space Policies are not inconsistent with our client’s development of the property consistent with the land use and zoning designation set forth in the 1993 General Plan and as studied in the EIR. Notably the 1993 General Plan “Open Space and Recreation Element” states, “The extensive open space areas in the City (hillsides, orchards, debris basins, individual property yards and gardens, school grounds, and other vacant land) provide the City of Bradbury with its rural character and physical beauty. Together with the low density developments, extensive views of the mountains and valleys are available in the City.” (1993 General Plan, 4-3.) In other words, the low density type development that is forecast and studied for the subject “Estate-(Hillside) 5 acre, A-5” area is fully consistent with the projected type of low density building that will still afford open space views.

**Proposed Update**

The Update proposes to impose an “Open Space, Hillside Preservation” land use designation atop our client’s 192 acres (that is part of a larger 302 acre vacant area) based upon mere unsupported geologic, environmental, and biological conclusions, that “[t]he undevelopable (hillside preservation) property will yield zero dwelling units and therefore zero population increase.” (City of Bradbury, Land Use Element-Draft-August 23, 2012, No. 10.) The “Open Space, Hillside Preservation” land use designation is to “Encourage as much hillside preservation as possible through the use of conservation easements, acquisition efforts by conservation organizations or preservation as natural preserves that promote the protection of natural hillsides as open space in perpetuity.” (City of Bradbury, Land Use Element-Draft-

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August 23, 2012, No. 16.) There you have the City's intention nicely distilled—to eviscerate the ability to develop the 302 acre hillside area, or to make it so financially burdensome in terms of complying with City permit rejections and re-submittals under the new "A-5 (SP)" zoning designation that the value of this entire 302 acreage is so reduced as to become suited for nothing more than conservation easements, or donation or sale for open space purposes only. This, of course, is the antithesis of the 1993 General Plan's, and current General Plan's, "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation that permits low density development up to 35 units!

The Update seeks to justify this "undevelopable" moniker that contradicts the General Plan and the EIR by espousing baseless and unstudied environmental conclusions. There is no study or imperical data to support mere conclusory statements. The following from the City of Bradbury General Plan Update Background Report April 2012, 2.4 Existing Land Use and Zoning, Chapter II-6:

"The 'Open Space-Undeveloped' area consists of 302 acres of privately owned land located in the northern quarter of the City adjacent to the Angelus National Forest. This area is not accessible by public or private streets nor is it serviced by any public utility. The area contains 10 to 15 significant ridgelines that are protected from development. The area contains three blueline streams that are protected from development activity. The majority of the area contains steep hillsides that have average slopes greater than 50%. The area contains liquefaction zones and earthquake induced landslide zones. The area may contain sensitive flora and fauna. It is questionable that the potential unit density or yield for this area would make it economically feasible to initiate a request for development approval. Therefore, the City has recognized that this area will most likely remain in its current natural and undeveloped configuration without further environmental analysis."

These environmental conclusions are completely unsubstantiated by any EIR study or are expressly contradicted by the EIR, and, therefore, lead to an arbitrary, capricious, and evidentiary-lacking conclusion that this area is undevelopable and should now be designated as such.

For instance:

- "This area is not accessible by public or private streets nor is it serviced by any public utility." There is no analysis, at all, to support a conclusion that roads cannot be put up to and within the 302 acre parcel. Certainly the EIR and General Plan presumes the possibility of such via its "theoretical buildout under the land use plan." Roads are presumed to provide the anticipated 32 units access into and out of their residences.

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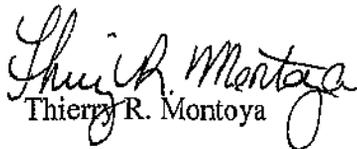
- “The area contains 10 to 15 significant ridgelines that are protected from development.” There is no analysis that identified any particular ridgelines, explains what makes them “significant,” or how these unidentified, unstudied and even unnumbered (10-15) ridgelines could be specifically “protected from development.”
- “The area contains three blueline streams that are protected from development activity.” There is no analysis that concludes that any stream in the 302 acres is “protected from development activity.” A blueline stream by sole virtue of its designation is not “protected from development activity” as the Army Corps of Engineers could grant a Clean Water Act section 404 permit to allow for development. The City’s documents certainly lack any Army Corps of Engineers determination that it would refuse to grant any 404 permit for any stream[s] in any portion of the City.
- “The majority of the area contains steep hillsides that have average slopes greater than 50%.” The EIR’s geologic section certainly did not study the number of slopes or their pitches, such that the “majority...average.. and greater than 50%” comment is a complete fabrication. (Draft EIR, 3-14through 3-24.) The EIR does not preclude development of the 302 acres based on slope steepness, stating that “Areas with slopes greater than 20 percent should be subject to engineering design methods to achieve adequate foundation support.” So, if this point is trying to allude to the fact that slope steepness bars the development of the 302 acre consistent with the General Plan, that is a completely false statement.
- “The area may contain sensitive flora and fauna.” The speculative nature of this comment illustrates the lack of a study to make any statement on the subject. The EIR did not preclude the development of the 302 acres pursuant to the General Plan’s land use and zoning limitations based on some unstated and unsubstantiated “sensitive flora and fauna.”
- “The area contains liquefaction zones and earthquake induced landslide zones.” The EIR specifically does not identify any portion of the 302 acres to be within liquefaction zones. (Draft, EIR, Exhibit 3-4.) Not surprisingly, the liquefaction zones are contained in the lower reaches of the City. There is no study or imperical data or study to support the assertion of a liquefaction zone. As for landslide zones, the EIR goes to great lengths to give general understanding of some of the faults that may be within City limits, somewhere, but does not conclude the presence of any particular fault as that “will require additional study to determine its exact location.” (Draft, EIR 3-19.) Also, the EIR does not preclude the development of the 302 acre based on landslides.
- “It is questionable that the potential unit density or yield for this area would make it economically feasible to initiate a request for development approval.” No economic study has been performed to determine the feasibility of the development of the 302 acres. This “conclusion” is pulled entirely out of thin air.

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This is but a few of the examples of the arbitrary and capricious conclusions that the City has been making to try and eviscerate my client's ability to develop its 192 acres consistent with the EIR and the General Plan's "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation. Additional points in my August 28, 2013 letter have gone without meaningful response. The bottom line is that the City has never conducted a CEQA study to study the project of changing the General Plan from "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation, to "General Plan-Open Space-Undeveloped; Zoning -A-5 (SP), Agriculture Residential Estate-Specific Plan." The City has never performed a CEQA study to consider the new project of changing the General Plan from one of low density development under "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation, to one that does not afford any development within the 302 acres at all—under the auspices of "Preservation" or "conservation easement" purposes. The City has never undertaken any CEQA study at all to form the basis for its many environmental, biological, geologic, and economic conclusory statements all meant to culminate in an overall conclusion that the 302 acre hillside parcel is "undevelopable." The Update, at its core, represents a substantial departure from the General Plan and the EIR that supported it in terms of the 302 acres; so substantial, as set forth in this and our prior correspondence to the City, to warrant a supplemental EIR if the City is inclined to change the land use element and zoning designation for the 302 acre parcel. Anything short of that is a violation of CEQA.

Very truly yours,

ALVARADOSMITH  
A Professional Corporation

  
Thierry R. Montoya

TRM:dh

cc: City Clerk,  
City of Bradbury

City Council Report  
General Plan 2012-2030 Update

**EXHIBIT “J”**

Alvarado Smith Letter

November 8, 2013