



1 MacArthur Place  
Suite 200  
Santa Ana, California 92707  
Phone: 714.852.6800  
Fax: 714.852.6899  
www.AlvaradoSmith.com

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### FACSIMILE TRANSMISSION

**DATE:** November 8, 2013

**FILE NO.:** N1430.1

**To:**

NAME	FAX NO.	PHONE NO.
City Clerk/City of Bradbury	626-303-5154	

**FROM:** Thierry R. Montoya, Esq. **PHONE:** 714-852-6800

**SENT BY:** Donna F. Heflin  
Legal Secretary **PHONE:** 714-852-6800

**RE:** *City of Bradbury*

NUMBER OF PAGES INCLUDING COVER PAGE: 12

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**MESSAGE:**

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INCLUDING PROFESSIONAL CORPORATIONS

1 MacArthur Place  
Suite 200  
Santa Ana, California 92707  
Phone: 714.852.6800  
Fax: 714.852.6899  
www.AlvaradoSmith.com

Thierry R. Montoya  
(714) 852-6882  
tmontoya@alvaradosmith.com

Los Angeles  
213.229.2400

San Francisco  
415.624.8885

Raymond G. Alvarado,  
Retired

November 8, 2013

**VIA FACSIMILE AND U.S. MAIL**

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")**

Re: City of Bradbury's *California Environmental Quality Act* ("CEQA") Violation

Dear Mr. Reisman:

As you know, we represent D&M Investments Inc. ("D&M") in regards to the 192-acre parcel it owns within the 302 acres the City's General Plan 2012-2030 Update ("Update") now proposes to reserve for "vacant hillside preservation area," or "hillside preservation and open space," to create an undevelopable area in direct contravention to the 1993 and 2007 General Plan's "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation. The Update's stated "Goals" confirm an intention to convert the 302-acre site from an area slated for residential development of up to 32 units--into "hillside and open space areas in perpetuity by enforcing the Hillside Development Standards", or into an area suitable only for "transferring development rights to create and preserve open-space." (Update, Land Use Goal 2, page 14; Community Resources, Open-Space Action No. 8, page 8.) The City Council should be frank and state these "Goals" in terms of what it really hopes to accomplish: the implementation of 302-acre site specific overlays and zoning changes that preclude any and all residential development so that the property is worthless for anything other than open-space designation.

Under the guise of an addendum, the City Council is trying to slide through specific overlays and other significant land use and zoning changes intended to affect the 302-acres all based on unstudied and incorrect environmental conclusions that would eviscerate D&M's ability to develop its property to the 1993 Environmental Impact Report ("EIR") and General



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Plan's "Estate-(Hillside) 5 acre, A-5" land use categorization and zoning designation. The City has never undertaken any CEQA study--at all--to form the basis for its newly named Community Resources, Open Space No. 2 "Hillside Preservation," and Community Resource Conservation No. 1, "Vacant Hillside Preservation Area" overlays that are intended to apply to D&M's property, overlays that serve to meet the City Council's goals of "transferring development rights to create and preserve open-space." (Update, Community Resources No. 2, pgs. 6-14.) The Update, at its core, is intended to meet the desires of those on the City Council that want to preclude any development within the 302-acres, and only for "conservation easements, [or] acquisition efforts by conservation organizations or preservation as open-space in perpetuity." (Update, Land Use, Land Use Action 1, page 15.) This scheme represents a significant departure from the EIR that warrants at least a supplemental EIR if the City is inclined to change the land use element and zoning designation for the 302-acre parcel. Otherwise, the City is violating CEQA.

**The City Must Prepare a New EIR to Evaluate The Environmental Impacts of an "Open Space-Hillside Preservation" or "Vacant Hillside Preservation Area."**

The City's conduct in trying to alter the land use designation of the 302-acre site into an undevelopable area suitable for "preservation as natural preserves that promote the protection of natural hillsides as open space-in perpetuity", is analogous to *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4<sup>th</sup> 1307. In *Sierra Club*, the county had certified a programmatic EIR for a resource management plan that regulated mining. The plan specified lands available for future mining and provided for preservation of identified agricultural land. (*Id.* at pp. 1313-1314.) Years later, a mining company proposed to amend the EIR to designate for mining a large parcel that had been identified as agricultural in the EIR. (*Id.* at p. 1314.) The court held that the deferential review provided in *Public Resources Code* section 21166 ("substantial evidence test") did not apply in this context because the proposed project was not "either the same as or within the scope of" the program described in the EIR, which had expressly exempted the agricultural land from future mining. (*Id.* at 1321.)

Similarly, the City's Update relative to the 302-acre site is not the same as, or within the scope of, that which is approved under the 1993 and 2007 General Plan, and as studied by the 1993 EIR. The General Plan (1993 and 2007) does not place D&M's property within an "area [that] has been designated for hillside preservation." Rather, D&M's 192-acre parcel is located in an area designated as "hillside development overlay." Preservation and development are mutually exclusive terms; preservation is a substantial departure from development. (General Plan, Update 2007, page 4.) The General Plan, Update 2007, page 2-5-2-7, contemplates the build out of the 302-acre parcel in spite of the difficulties in doing so. Moreover, the EIR and the 1993 and 2007 General Plan's conclusion for the 302-acre site is one of possible development up to an anticipated 32 units. (General Plan, Update 2007, section 2, 2-4-2-7,



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Exhibits 2-1; 2007 General Plan Land Use Map, January 16, 2007.) General Plan, Update 2007, Table 2-2, page 2-5, does not impose a "specific plan" requirement on the "corresponding A-5 zoning," that the Update now designates without any CEQA study at all. The "SP-Specific Plan Overlay Zoning District" is another new and unstudied Update overlay that will serve as an additional impediment to development of the 302-acres.

Like *Sierra Club, supra*, the City's Update represents a bold and unlawful attempt to specifically alter the developable land use and zoning characteristics assigned to the 302-acre site. That would subject the City to a lower-threshold of judicial review--the "fair argument" test under *Public Resources Code* section 21094(c). (*Id.* at pp. 1318-1319; *Latinos Unidos De Napa v. City of Napa* 2013 WL 5917661 (Cal.App. 1 Dist.) "The 'fair argument' test is derived from section 21151, which requires an EIR on any project which 'may have a significant effect on the environment.' That section mandates preparation of an EIR in the first instance 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.'" (*Latinos Unidos De Napa, infra*, citation omitted.) "The fair argument standard creates a 'low threshold' for requiring an EIR, reflecting a legislative preference for resolving doubts in favor of environmental review." (*Sierra Club, supra*, at pp. 1316-1317.)

The assertion in your September 16, 2013 letter that the Update's many overlays atop D&M's property does not "prohibit [its] development," is entirely belied by the Update's many unsubstantiated environmental, biological, geologic, and economic conclusions all culminating in the Update's overall conclusion that the 302-acre hillside parcel is "undevelopable." For instance:

**"Hillside Preservation Areas.** Of special note are the 302-acres of undeveloped property located in the northern portion of the City adjacent to the City of Monrovia and the Angeles National Forest. The 302-acre site is subdivided into eight privately owned parcels of land. The area contains steep hillsides, prominent ridgelines, and three seasonal Blueline streams (Bliss Canyon, Bradbury Canyon, and Spinks Canyon). Abundant wildlife either reside in this area or transverse the area in search of food and shelter. The City's zoning and development standards recognize the importance of maintaining this area in its natural state. Environmental constraints may be so severe that development of this area may not be realistic. This area has been designated for hillside preservation. Moving from south to north the City's topography becomes steeper and the required minimum size of the subdivided parcels becomes larger. The average slope of each parcel governs the amount of natural open-space that must be maintained. As the average slope increase the amount of the parcel that can be graded declines. The community's desire to maintain open space is served by these development standards.



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Many of the developed agricultural/residential parcels are feeding grounds for local deer and black bears. Residents have often observed bears frolicking in their yards, trees and swimming pools. The migratory patterns of these large animals are uninhibited by the type and extent of development that is permitted in the City.

Open-space areas include those areas unsuitable for development due to environmental facts such as steep slopes or unstable ground conditions." (Update, Community Resources, page 3.)

As noted above, the 1993 and 2007 General Plan contemplated the build out of the 302-acre site to the zoning designation, in spite of the 1993 EIR's noted difficulties. "The majority of the 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 "1 unit/5 acres" after the hillside development standards are imposed, are likely to reflect less development than what is actually permitted under the zoning." The Update is incorrect in stating that: "The City's zoning and development standards recognize the importance of maintaining this area in its natural state...[and that] [e]nvironmental constraints may be so severe that development of this area may not be realistic." (Update, Community Resources, page 3.) The 2007 General Plan belies this specific Update conclusion as the City's zoning and development standards allow for "hillside development" of the 302-areas--not hillside preservation "in its natural state." The City's zoning and development standards also contemplate hillside development in spite of difficulties, such that development is to be anticipated--contradicting the Update's unsupported conclusion that "[e]nvironmental constraints may be so severe that development of this area may not be realistic." (Update, Community Resources, page 3.)

The 1993 EIR did not identify any "prominent ridgelines" at all, so it is surprising that Ann McIntosh, the City Planner, provided D&M with the attached map in August, 2013, which appears to point to certain ridgeline features that were never specifically designated in the 1993 EIR. The importance of these purported ridgelines to any attempted development of the 302-acre parcel consistent with the 1993 and 2007 General Plan's zoning designation was never studied in any CEQA analysis. The Update's conclusion that any area ridgelines are "prominent" or otherwise is an unsubstantiated, unstudied conclusion.

As more fully stated in our October 28, 2013 letter, there is no CEQA study that concludes that any slope steepness, blueline stream, or ridgeline issue[s] precludes development of the 302-acre parcel. The EIR also did not study the relevance of the Update's "Environmental Resources Map, Exhibit CR Conservation No. 2" that purports to depict ridgelines and blueline streams as development impediments. (Update, Community Resources Page no. 15.)

The Update also suggests unstudied and unidentified "abundant wildlife either reside...or



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transverse the [302-acre] parcel...[to include] frolicking bears." The EIR does not mention any frolicking animals and does not conclude that any wildlife, abundant or otherwise, supports the Update's present conclusion that biological factors could now justify removing the development potential of the 302-acres to convert it into "hillside preservation," or "vacant hillside preservation area." (Update, Community Resources No. 2, pgs. 6-14.)

Finally, your September 16, 2013 letter describes the Update's new "SP" designation as allowing "an applicant to develop standards that differ from the Development Code if it will result in a project which better protects sensitive areas." There has been no CEQA study of the necessity for a "SP" zoning overlay, there has been no CEQA study of any sensitive areas that warrants this additional development requirement, and there has been no CEQA study that links the necessity for an "SP" zoning overlay to any hillside-related concern. Quite simply, the "SP" designation is another unstudied and uncorroborated conclusion that would permit the City Council to meet its "desire to maintain open space...by these development standards." (Update, Community Resources Element-Draft, page no. 3.)

Again, the Update is lacking in supportive environmental studies. For instance, at another section the Update reads:

"The County of Los Angeles prepared a 1604 Streambed Alteration Agreement for the maintenance of debris basins. The County conducted a comprehensive evaluation of the presence or absence of special status or sensitive species and critical habitat. The value of open space land is based on three primary elements: quality, quantity, and connectivity. Open space adjacent to or within National Forests or other protected areas ranked higher than open-space currently used as parkland or golf courses or otherwise hindered in their long-term value for plants and wildlife. Each basin was assessed based on the following three elements: 1) having very high quality (including the type of vegetation and the type of vegetative community); 2) quantity of vegetation; 3) area size, and connectivity to other open space areas. Areas rated as the most desirable received a high ranking of 3.0 and the least desirable at a ranking of 0.0. Overall, Bradbury Debris Basin was rated at 2.20 and Spinks Debris Disposal Area at a 2.18." (Update, Community Resources, page 6, Exhibit No. CR Open-Space No. 2.)

The preceding paragraph is further support for the Update's unstudied and unsubstantiated conclusion that an unattached County of Los Angeles 1604 Streambed Alteration Agreement warrants setting aside the 302-acre parcel for "hillside preservation." There has been no EIR analysis of any such Agreement, or of the link between the 302-acre site's "A-5" zoning characterization allowing for development to 32 units and the location or significance of any debris basin.



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Another example of the Update's unstudied and unsubstantiated conclusions is:

"The steep hillsides areas are considered ecologically significant due to their vacant state and the presence of native vegetation. These areas have a high sensitivity for the presence of important biological resources. Measures should be observed to prevent disturbance or destruction of existing habitat. Development proposals within areas with a high sensitivity rating (shown in Exhibit CR Conservation No. 1) will be reviewed to determine the extent of significant ecological resources on the property and the potential impacts new development will have on these resources." (Update, Community Resource page No. 12.)

There has been no CEQA study linking any steep hillside to any ecologically significance, high sensitivity, or measures that warrant the prevention of disturbance or destruction of any steep hillside. Contrastingly, the 1993 EIR does contemplate the development of the steep hillside areas, as do the 1993 and 2007 General Plans. Moreover, the 1993 EIR did not preclude the development of the 302-acre site pursuant to any flora or fauna. The Update's Exhibit CR Conservation No. 1 is based on unstudied and unfounded conclusions that warrant the preparation of a supplemental EIR should the City Council seek to impose this new overlay that is designed to prevent the development of the 302-acres, development that allegedly now would constitute "disturbance or destruction of existing habitat." (Update, Community Resource page No. 12.)

The Update is the means by which factions on the City Council hope to eliminate "development rights to create and preserve open-space." (Update, Community Resource No. 8.) In other words, to take property that could be developed pursuant to the 1993 and 2007 General Plan's "A-5" zoning designation. In so doing, the City Council is hoping to misconstrue CEQA by trying to profoundly change the land use element and zoning designation for the 302-acre parcel through an addendum to the 1993 EIR; an addendum intended to skirt public notice and scrutiny. However, the totality of the circumstances establishes that the Update is a new project, not a minor modification of the formerly studied General Plan of 1993, as updated in 2007. This is significant because an addendum is only appropriate to a previously certified EIR where "minor technical changes or additions are necessary." (*Guidelines*, section 15164(b).) Here, any one of our arguments stated in this letter, and in our previous October 28, 2013 letter, would support a "fair argument" that the Update's intention as to the 302-acre parcel is to substantially change its land use element and zoning designation--from developable to undevelopable, "vacant hillside preservation area," or "hillside preservation and open space"--and thereby gut any development of the 302-acre site. This is a significant departure from the 1993 and 2007 General Plan, and the EIR that supported it. (*Public Resources* section 21166 and *Guidelines* section 15162.) Under the evidence set forth in D&M's letters, the City Council would have to support the Update's preservation, open space, conservation easement overlays



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and supporting conclusions through a new EIR. (*San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4<sup>th</sup> 382, 389.) Anything less is a violation of CEQA.

Very truly yours,

ALVARADOSMITH  
A Professional Corporation

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

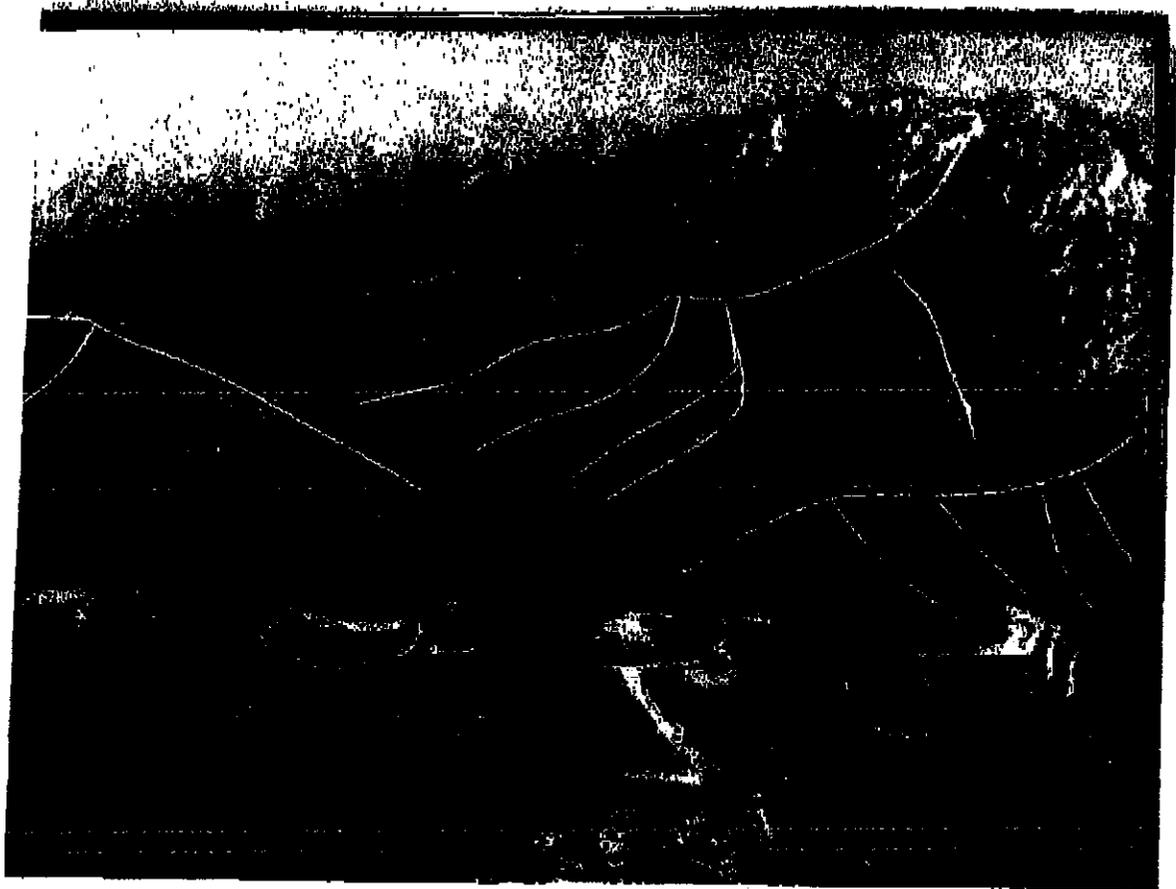
Thierry R. Montoya

TRM:dh  
Enclosure as noted



Cary S. Reisman  
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cc: City Clerk



City Council Report  
General Plan 2012-2030 Update

**EXHIBIT “K”**

Alvarado Smith Letter

November 12, 2013



1 MacArthur Place  
 Suite 200  
 Santa Ana, California 92707  
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 Fax: 714.852.8899  
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**FROM:** Thierry R. Montoya, Esq. **PHONE:** 714-852-6800

**SENT BY:** Donna F. Heflin **PHONE:** 714-852-6800  
 Legal Secretary

**RE:** *Planning Commissioner Frank Hernandez and City of Bradbury's Violation of the Political Reform Act*

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Los Angeles  
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San Francisco  
415.624.8685

Thierry R. Montoya  
(714) 852-6862  
tmontoya@alvaradosmith.com

Raymond G. Alvarado,  
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November 12, 2013

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Cary S. Reisman  
CITY ATTORNEY  
WALLIN, KRESS, REISMAN  
& KRANITZ, LLP  
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THE CITY OF BRADBURY'S, ("CITY"), PROPOSED GENERAL PLAN 2012-2030  
UPDATE ("Update")**

**Re: Planning Commissioner Frank Hernandez and City of Bradbury's Violation of the  
Political Reform Act**

Dear Mr. Reisman:

As you know, we represent D&M Investments Inc. ("D&M") in regards to the 192-acre parcel it owns within the 302 acres the City's General Plan 2012-2030 Update ("Update") now proposes to reserve for "vacant hillside preservation area," or "hillside preservation and open space." It has come to D&M's attention that Planning Commissioner Frank Hernandez ("Mr. Hernandez") violated the Political Reform Act ("PRA") by voting to recommend approval of the Update when he has a conflict of interest in the outcome of such a vote.

Mr. Hernandez participated in a governmental decision on behalf of the City of Bradbury to vote to create a "hillside and open space areas in perpetuity by enforcing the Hillside Development Standards", or into an area suitable only for "transferring development rights to create and preserve open-space" notwithstanding that he owns real property that abuts the acreage subject (the "Subject Land") to the Update, and has taken for his own exclusive use entry into the Subject Land directly from his own real property. (Update, Land Use Goal 2, page 14; Community Resources, Open-Space Action No. 8, page 8; Attached Agenda and Minutes of the August 28, 2013, Planning Commission Meeting.) In effect, Mr. Hernandez, in creating his own road and entry only accessible by his real property into the Subject Land, and then voting to

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restrict its use to open space that may never be used for development has taken the Subject Land for his own benefit, and would significantly increase the value of Mr. Hernandez' real property, at the expense of D&M and the public in general. Mr. Hernandez never disclosed the fact that his real property abuts the Subject Land, nor that he paved a private road with a private entrance onto the Subject Land, prior to the Planning Commission rendering a vote. Nor did he recuse himself from voting on the issue of the Update. Such actions jointly constitute a violation of the PRA.

Gov't Code § 87100 states: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Gov't Code § 87103(d) states in part: "A public official has a financial interest in a decision within the meaning of Calif. Gov't C. § 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:...(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management."

Gov't Code § 91003 states that:

"(a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Calif. Gov't C. § 87100), Article 4 (commencing with Calif. Gov't C. § 87400), or Article 4.5 (commencing with Calif. Gov't C. § 87450) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this sub-section of the Government Code include, but are not limited to orders, permits, resolutions and contracts,

but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this sub-section of the Code, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action."

California's conflict of interest statutes are based on the belief that a public official cannot serve two masters simultaneously, and that the duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds the office. *People v. Honig* (1996) 48 Cal.App.4th 289; *Thomson v. Call* (1985) 38 Cal.3rd 633. The purpose of the conflict of interest statutes is to eliminate temptation, avoid the appearance of impropriety, and limit the possibility of improper personal influence on a public official's decisions.

In the PRA, the California Legislature has enacted an important body of statutory law which addresses potential conflicts of interest in Mr. Hernandez' vote as a Planning Commissioner. The provisions of the PRA are not limited to contracts, but apply to all "governmental decisions" in which Mr. Hernandez participates. Chapter 7 of the PRA (Calif. Gov't C. § 87100, et seq.) deals with conflicts of interest. Calif. Gov't C. § 87100 states the basic prohibition as follows: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

In general, a public official has a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on his or her financial interests. The disqualification provisions of the PRA hinge on the effect a decision will have on a public official's financial interest. When a decision is found to have the requisite effect, the official is disqualified from making, participating in the making, or using his or her official position to influence the making of the decision at any level of the decision-making process.

Further, the PRA prohibits public officials from participating in decisions if the public official's decision (including, but not limited to contracts) will have a material effect on the board member or his immediate family. See, 66 Ops.Cal.Atty.Gen. 156, 157-158 (1983). Calif. Gov't C. § 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Calif. Gov't C. § 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official.

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Calif. Gov't C. § 82048 defines "public official" to include "every member, officer, employee or consultant" of a local government agency. Calif. Gov't C. § 82041 defines "local government agency" to include a city. The official must make, participate in making, or attempt to use her official position to influence a governmental decision. Calif. Gov't C. § 87100 and California Code of Regulations 18700. A public official "makes a governmental decision" when the official, acting within the authority of his office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his agency to any course of action; (4) Enters into any contractual agreement on behalf of his agency; or (5) Determines not to act, unless such determination is made because of his financial interest. California Code of Regulations 18702.1, subd. (a). A public official "participates in making a governmental decision" when, acting within the authority of his position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decision-maker either directly or without significant intervening substantive review. California Code of Regulations 18702.2. A public official "attempts to use his or her official position to influence a governmental decision" of his or her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. California Code of Regulations 18702.3.

The official must also have an economic interest that may be financially affected by the governmental decision, either directly or indirectly. Calif. Gov't C. § 87100 and 87103; California Code of Regulations 18704. The governmental decision must have a material financial effect on the economic interest. Calif. Gov't C. § 87100 and 87103. In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. California Code of Regulations 18705.4, subd. (a). At the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect on the economic interest. Calif. Gov't C. § 87100 and 87103. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. California Code of Regulations 18706, subd. (a). Whether the financial consequences of a decision are "reasonably foreseeable" at the time of a governmental decision depends upon the facts of each particular case. California Code of Regulations 18706, subd. (b).

If a public official does engage in a vote on a project in which he has a conflict of interest, the remedy found in Gov't Code § 91003, among other things, applies. Any person residing in the jurisdiction may bring a civil action to enjoin the pernicious conduct, and the court may award attorneys' fees and costs to the individual bringing suit. Additionally, if there is an improper financial benefit, pursuant to Gov't Code § 91005, any person residing in the jurisdiction who brings a PRA action can be awarded an amount up to three times the value of the benefit.

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In the instant matter, Mr. Hernandez is a Planning Commissioner for the City. As a Planning Commissioner for the City, he is subject to the PRA. Mr. Hernandez further owns real property that abuts the Subject Land. Mr. Hernandez has recently graded a road into the Subject Land, and has installed a non-permitted entrance into the Subject Land, which in effect gives him unfettered access to land that does not belong to him.

Mr. Hernandez has further voted to recommend that the City approve the Update, which would grant him unobstructed mountain views and result in an increase his property value at the expense of our client, specifically, and the public in general.

Mr. Hernandez' actions in failing to disclose the fact that he has taken active steps to gain exclusive access on the Subject Land, that his own real property abuts the Subject Land, and that he will realize a direct economic benefit in the increase in his own property values by voting to approve the Update, all fall within the prohibited conduct found in the PRA as he is participating in the making of a governmental decision. Indeed, it is clear that he has a financial interest in the form of his increased property value through the unobstructed views, and his actions in making use of the Subject Land when he does not have any right to access it.

Given the facts, Mr. Hernandez' actions violates the intent of the PRA to prohibit conflicts of interest. Mr. Hernandez should have disclosed the fact that his real property abuts the Subject Land, that he has graded an area next to the Subject Land, and has built his own private entrance into and out of the Subject Land for his own personal use. He then should have recused himself from any vote. His failure to do so tainted the entire process, and puts the City at risk of an injunctive action.

D&M therefore demands that the City abstain from voting on the Update until a new vote can be made before the Planning Commission that excludes Mr. Hernandez from participation. In the event the City fails to do so, D&M will have no choice but to bring

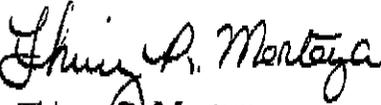


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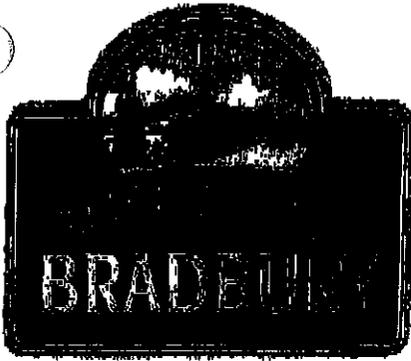
litigation against both the City and Mr. Hernandez seeking injunctive relief, along with any other remedies available to it at law or in equity.

Very truly yours,

ALVARADOSMITH  
A Professional Corporation

  
Thierry R. Montoya

TRM:tmh  
Enclosures as Noted  
cc: City Clerk



# AGENDA

A REGULAR MEETING OF THE  
PLANNING COMMISSION OF THE CITY OF BRADBURY,  
TO BE HELD ON

WEDNESDAY, AUGUST 28, 2013

at 7:00 P.M. IN THE BRADBURY CIVIC CENTER  
Located at  
600 Winston Avenue, Bradbury, CA 91008

The City of Bradbury will gladly accommodate disabled persons wishing to communicate at a City public meeting. Should you need special equipment or assistance in order to communicate at a public meeting please inform the City Manager's Office at (626) 358-3218 a minimum of 72 hours prior to the scheduled meeting.

Materials related to an item on this Agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Clerk's Office during normal business hours.

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

Chairperson: Kuba  
Vice-Chairperson: Esparza  
Commissioners: Hernandez, Dunst & Novodor

3. APPROVE AGENDA

Chairperson to approve agenda as presented or modified

4. MINUTES

Approval of Planning Commission Meeting Minutes of:  
July 24, 2013.

5. FAIR POLITICAL PRACTICES ACT

In compliance with the California State Fair Political Practices Act, each Planning Commissioner has the responsibility of disclosing any direct or indirect potential of a personal financial impact that could result from their participation in the decision making process.

**RECOMMENDATION:** Motion to receive and file the report as presented, or as modified.

6. CONTINUED PUBLIC HEARINGS

A. General Plan 2012-2030 Update

The Planning Commission will review the draft General Plan document, solicit public input and make whatever modifications are deemed necessary in order to find that the General Plan reflects the community goals, objectives and policies. When the Planning Commission is satisfied that the General Plan 2012-2030 Update reflects both the State's requirements for the General Plan as well as the community's vision it should make a recommendation to the City Council for its adoption.

B. Lot Line Adjustment LLA 13-15 375/425 Mount Olive Drive

A request to adjust the side lot line between two adjacent properties so that site improvements do not cross property lines.

7. **NEW PUBLIC HEARINGS**

A. **Tentative Parcel Map TPM 72325 147 Sawpit Lane**

The property owner Sanjeet Nijjar is requesting to create two lots in excess of 5 acres each from an existing parcel that is 12,808 acres in size. The result of parcel map would be a new proposed street from Sawpit Lane to the front of each parcel, one parcel 7.769 acres gross area and one parcel 5.038 acre gross area. The parcel of land is zoned A-5.

8. **PUBLIC COMMENT**

Citizens wishing to address the Planning Commission on any matter not scheduled on this agenda may do so at this time. Please state your name and address clearly for the record and limit your remarks to five minutes.

*Please note that while the Planning Commission values your comments, the Planning Commission cannot respond nor take action until such time as the matter may appear on a forthcoming agenda. Routine requests for action should be referred to City staff during normal business hours 8:00 a.m. - 5:00 p.m., Monday through Friday (626) 358-3216.*

9. **REPORTS AND ITEMS FOR FUTURE AGENDAS**

- A. Commission Members
- B. City Manager
- C. City Planner

11. **ADJOURNMENT**

The next regularly scheduled Planning Commission Meeting is: **Wednesday, September 25, 2013.**

"I, Claudia Saldana, City Clerk, hereby certify that this agenda was duly posted at the Bradbury Civic Center entrance on Friday, August 23, 2013 at 5:00 p.m."

  
City Clerk - City of Bradbury

**MINUTES OF A REGULAR MEETING OF THE  
PLANNING COMMISSION OF THE CITY OF BRADBURY,  
HELD ON AUGUST 28, 2013 AT 7:00 PM  
IN THE BRADBURY CIVIC CENTER**

**Meeting Called to Order:** The meeting of the Planning Commission of the City of Bradbury was called to order by Vice-Chairperson Esperza at 7:00 p.m.

**Pledge of Allegiance:** Commissioner Novodor led the pledge of Allegiance.

**Roll Call:** PRESENT: Vice-Chairperson Esperza, Commissioners Hernandez and Novodor  
ABSENT: Chairperson Kuba, Commissioner Dunst  
STAFF: City Manager Keith, City Planner McIntosh, City Clerk Saldana, Management Analyst Kearney, David Meyer with LDM Associates

**Commissioners Excused:** Commissioner Novodor made a motion to excuse Chairman Kuba and Commissioner Dunst from the meeting. Commissioner Hernandez seconded the motion, which carried.

**Approval of Agenda:** Commissioner Hernandez made a motion to approve the agenda as presented. Commissioner Novodor seconded the motion, which carried.

**Approval of July 24, 2013 Minutes:** Commissioner Hernandez made a motion to approve the minutes of the July 24, 2013 Planning Commission meeting. Chairman Novodor seconded the motion, which carried.

**Compliance with California Political Reform Act:** In compliance with the California Political Reform Act, each Commissioner has the responsibility to disclose direct or indirect potential for a personal financial impact as a result of participation in the decision making process concerning development applications. The Commissioners disclosed the following information relative to the items contained on the agenda:

**General Plan Update:** General Plan 2012-2030 Update:  
Citywide

**LLA 13-15:** Lot Line Adjustment No. LLA 13-15 for 325/475 Mount Olive Drive:  
Commissioners residing within 500 feet of 325/475 Mt. Olive Drive:  
None

**TPM 72325:** Tentative Parcel Map No. 72325 for 147 Sawpit Lane:  
Commissioners residing within 500 feet of 147 Sawpit Lane:  
None

**Motion:** Commissioner Novodor made a motion to receive and file the report as presented. Commissioner Hernandez seconded the motion, which carried.

**Public Testimony:** Thierry Montoya with AlvaradoSmith, 1 MacArthur Place, Suite 200, Santa Ana, stated that he is representing D&M Investments, which purchased 192 acres of vacant land (hillside/open space property) in Bradbury. Mr. Montoya hand-delivered a letter dated August 28, 2013 addressed to the Members of the Planning Commission asking that it be made part of the administrative records (attached hereto). A Public Records Request, dated August 28, 2013 was also submitted.

Mr. Montoya contended that 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 has been 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. For these reasons, D&M opposes any City attempt to adopt the General Plan Update as any such decision would be arbitrary, capricious, and lacking in evidentiary support.

Commissioner Novodor asked Mr. Montoya if he is representing the other property owner, Mr. Robert Bodkin, as well. The answer was no.

Commissioner Hernandez inquired when D&M officially became the new property owner. The question was not answered.

City Manager Keith asked Mr. Montoya if he compared the General Plan 2012-2030 Update to the 2007 General Plan. Mr. Montoya replied he did.

City Manager Keith stated that there is nothing in the General Plan that would prevent the property owner from submitting a development application to the City.

Mr. Montoya continued to describe the General Plan Update as a "mischaracterization."

Commissioner Novodor reminded Mr. Montoya that we are not in court here and to stop with the legal arguments. Mr. Montoya replied that he would not and that his comments were officially being made to the administrative record. Mr. Montoya stated that his client has the right to pursue an A-5 designation and that the City is taking that away.

City Planner McIntosh stated that she does not see where in the General Plan that is.

Commissioner Novodor asked Mr. Montoya to finish his comments.

Mr. Robert Bodkin stated that he is the owner of the other half of the 302 acres of property. Mr. Bodkin stated that he was never notified of what was going on and that he felt the City was taking away his property. There is a potential for 30 lots up there at \$5 million a lot. That will solve Bradbury's economic problems from now until the end of time because of the property tax involved.

**Public Hearing  
Closed:**

There being no further testimony, Vice-Chairman Esperza declared the Public Hearing closed.

**Speaker Cards:** City Manager Keith asked those in attendance to please fill out speaker cards to testify in the Public Hearings.

**General Plan 2012-2030 Update – Environmental Assessment:** General Plan Consultant (and former City Planner) David Meyer stated that he has been retained to prepare the General Plan 2012-2030 Update. The General Plan was presented to the Planning Commission at its July 24 meeting by the Chairman of the General Plan Steering Committee, Mr. James Hunt, and was reviewed extensively at that time. The Planning Commission continued the Public Hearing to allow the environmental consultants to complete their work. The Planning Commission has been presented with a copy of the Environmental Documentation, which is thicker than the General Plan itself.

Mr. Meyer mentioned that there are four (4) parcels in the City of Monrovia that fall under the sphere of influence of the City of Bradbury.

Mr. Meyer stated that the City of Bradbury adopted a comprehensive General Plan in 1994. 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 1994 General Plan and found that the goals, objectives, policies and land use patterns were still relevant and appropriate for the community.

The City's Steering Committee has recommended re-adoption of the land use patterns 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 General Plan Guidelines. A Climate Action Plan has been added to the General Plan in response to direction provided by the State of California.

Staff is of the opinion that the environmental impacts that may be caused by the proposed General Plan 2012-2030 Update have been thoroughly analyzed and mitigated by the 1994 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 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 1993 EIR to be exceeded.

**Recommendation:** In accordance with the provisions of Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, staff is recommending the approval and adoption of an Amendment to the 1993 General Plan EIR.

**Public Hearing Opened:** Vice-Chairman Esparza opened the Public Hearing and asked those wishing to speak in favor or opposition to come forward and be heard.

**Discussion:** General Plan Consultant David Meyer asked the Commissioners if they wanted him to respond to the comments made. The answer was yes.

Mr. Meyer stated that in terms of notifications, over the last 18 months the General Plan Steering Committee started working on the project. The project has been notified in a myriad of different methods that are available to the City, including standard posting and the City's website. We (the City) used all the resources available to us to put this particular item before the public.

With respect to Mr. Montoya's comment of the General Plan being arbitrary, capricious, and a number of other terms, and the contention that his clients are being denied the opportunity to file a development application based on the General Plan, this is untrue. And the opportunity to file development applications with respect to the zoning on that property is exactly the same. Nothing in this General Plan, which is a long-term policy document, contains anything that would impact their ability to file a development application.

Mr. Meyer stated that it would still be staff's recommendation that the Planning Commission adopt the Draft Resolution recommending that the City Council adopt the Bradbury General Plan 2012-2030 Update.

**Motion:** Commissioner Novodor made a motion to adopt Draft Resolution No. 13-225.PC recommending that the City Council adopt the Bradbury General Plan 2012-2030 Update. Commissioner Hernandez seconded the motion, which was carried by the following roll call vote:

**Approved:** AYES: Vice-Chairperson Esparza, Commissioners Hernandez, Novodor  
NOES: None  
ABSENT: Chairperson Kuba, Commissioner Dunet

**LLA No. 13-15 for  
325/475 Mount  
Olive Drive:**

City Planner McIntosh stated that the applicants are requesting approval of an adjustment to the configuration of the common property line between two adjacent parcels. The adjustment does not change the acreage on their lot, but is needed to accommodate existing property features that currently cross property line or are within required setback areas.

**General Plan and  
Zone:**

The City's General Plan designates the parcels as Estate 2-acre. Each parcel adjusted by the approval will continue to conform to the City's land use requirements. The proposed project is consistent with the goals and objectives of the City's adopted General Plan in terms of land use and density. The subject property is zoned A-2 (Agriculture/Residential 2-acre minimum lot size).

**Environmental  
Assessment:**

The proposed lot line adjustment is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15315, Class 16 (minor divisions of land).

**Parcel 1:** Parcel 1 (APN 8527-019-015) is described as Lot 1, Tract No. 22656, Map Book 613, pages 24-26. This parcel is an irregular shaped lot located at the bend of the road along the inclining portion of Mount Olive Drive. It is developed with a home, a horse stable, and a horse training area. The horse training area currently straddles the two properties along the property line. After the lot line adjustment is approved, the horse training area will be entirely on this property.

**Parcel 2:** Parcel 2 (APN 8527-019-021) is described as a portion of Lot 3 of Section 28, T1N, R10W of the Subdivision of the Rancho Azusa of Duarte in the City of Bradbury in Book 6, pages 80-82. This parcel is also an irregular shaped lot with a long flag portion along the rear of the interior side lot line and a very wide frontage. The lot is developed with a home, pool and horse stable. After the lot line adjustment is approved, the property will have a more rectangular configuration.

**Recommendation:** Staff recommends that the Planning Commission adopt Resolution No. 13-225.PC approving the Lot Line Adjustment No. 13-15.

**Public Hearing Opened:** Vice-Chairperson Esparza opened the Public Hearing and asked those wishing to speak in favor or opposition to come forward and be heard.

**Public Testimony:** None

**Public Hearing Closed:** There being no public testimony, Vice-Chairperson Esparza declared the Public Hearing Closed.

**Motion:** Commissioner Hernandez made a motion to adopt Resolution No. 13-226.PC conditionally approving Lot Line Adjustment No. LLA 13-16, subject to the conditions in the staff report dated August 28, 2013. Commissioner Novodor seconded the motion, which was carried by the following roll call vote

**Approved:** AYES: Vice-Chairperson Esparza, Commissioners Hernandez, Novodor  
NOES: None  
ABSENT: Chairperson Kuba, Commissioner Dunst

**Tentative Parcel Map No. TPM 72325 for 147 Sawpit Lane:** City Planner McIntosh stated that the applicant, Sanjeet Nijjar, is requesting approval of plans to subdivide a 12.80 gross acre parcel of land into two (2) lots for the future construction of one additional single-family residential estate dwelling unit. The two lots will each be in excess of five (5) acres, one parcel 7.769 acres of gross area and the other parcel 5.033 acres gross area with a new private street from Sawpit Lane to the front of each parcel.

**General Plan and Zone:** The City's adopted General Plan designates the subject property as "Estate 5-acre." The subject property contains 12.80 gross acres of land area. The proposed project is consistent with the goals and objectives of the City's adopted General Plan in terms of land use and density. The subject property is zoned A-5 (Agriculture/Residential 5-acre minimum lot size). The A-5 zone allows residential and equestrian uses.

**Environmental Assessment:**

The proposed subdivision of the subject property into two residential estate lots and the grading of the proposed building pad is considered minor in nature. Therefore, the proposed project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15315, Class 15 of the State CEQA Guidelines.

**Recommendation:**

The Planning Department recommends that the Planning Commission adopt a Resolution recommending that the City Council conditionally approved the proposed subdivision request subject to the following conditions:

**Environmental:**

It is suggested that the Planning Commission recommend that the City Council adopt an Environmental Categorical Exemption in accordance with the provisions of CEQA and Local Environmental Guidelines.

**Findings:**

It is suggested that the Planning Commission recommend that the City Council adopt the following findings of fact relative to the proposed subdivision and variance request:

**Tentative Parcel Map:**

1. The proposed parcel map as submitted and conditioned herein is consistent with the adopted general plan and zoning code.
2. The design and improvement of the proposed subdivision is consistent with the adopted general plan and zoning code.
3. The site is physically suitable for the proposed type of development.
4. The site is physically suitable for the proposed density.
5. The design of the subdivision and proposed improvements are not likely to cause substantial environmental damage and will not cause substantial environmental damage and will not substantially and avoidably injure fish or wildlife or their habitat.
6. The design of the subdivision and type of improvements are not likely to cause serious public health problems.
7. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large for access through or the use of property within the proposed subdivision.

**Public Hearing Opened:**

Vice-Chairperson Esparza opened the Public Hearing and asked those wishing to speak in favor or opposition to come forward and be heard.

**Public Testimony:**

The applicant Sanjeet Nijjar, 29 Starlite Drive, stated that he plans to clean up the property, trim the trees (no tree removals), and put in the private street.

Mark Schluder, 142 Madeleine, Monrovia, stated that he has no objections to the project, but was concerned about the view impact of future development. Mr. Schluder also stated that he was against solar arrays. Commissioner Hernandez stated that the City does not regulate solar arrays, the State does.

**Public Hearing Closed:**

There being no further public testimony Vice-Chairperson Esparza declared the Public Hearing closed.



Honorable Planning Commission  
City of Bradbury  
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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.



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1 MacArthur Place  
Suite 200  
Santa Ana, California 92707  
Phone: 714.852.8800  
Fax: 714.852.8888  
www.AlvaradoSmith.com

Los Angeles  
213.226.2400

San Francisco  
415.824.8886

Thierry R. Montoya  
(714) 842-6800  
tmontoya@AlvaradoSmith.com

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