



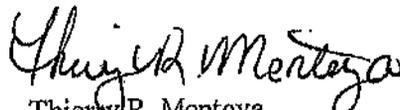
Honorable Planning Commission
City of Bradbury
August 28, 2013
Page 3

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

AS ALVARADO SMITH

A PROFESSIONAL CORPORATION
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Santa Ana, California 92707
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www.AlvaradoSmith.com

Los Angeles
213.229.2400

San Francisco
415.624.8665

Raymond G. Alvarado,
Retired

FACSIMILE TRANSMISSION

DATE: August 28, 2013

FILE NO.: 43CD.TRM

To:

NAME	FAX NO.	PHONE NO.
Honorable Planning Commission	626-303-5154	

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

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

RE: Proposed General Plan 2012-2030 Updates

NUMBER OF PAGES INCLUDING COVER PAGE: 4

VIA FACSIMILE AND HAND DELIVERY

MESSAGE:

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Raymond G. Alvarado,
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FACSIMILE TRANSMISSION

DATE: August 28, 2013

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

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Legal Secretary

RE: Proposed General Plan 2012-2030 Updates

NUMBER OF PAGES INCLUDING COVER PAGE: 4	VIA FACSIMILE AND HAND DELIVERY
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MESSAGE:

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City Council Report

General Plan 2012-2030 Update

Public Records Requests

EXHIBIT "CC"

Alvarado Smith Letter

October 25, 2013



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

RECEIVED OCT 24 2013

October 25, 2013

VIA FACSIMILE (626) 303-5154 AND U.S. MAIL

City Clerk
City of Bradbury
600 Winston Avenue
Bradbury, CA 91008

Re: *Public Records Act Request*

Dear City Clerk:

By this letter and pursuant to the California *Public Records Act* and California *Government Code* sections 6250-6270, I request, on behalf of D&M Investments, Inc. that the City of Bradbury ("City") provide me with copies of the following public records:¹

1. Any and all documents related to any City Council designation that the "area zoned Agricultural Residential Estate" is "appropriate for the need to prepare a Specific Plan(s) in order to assess the development potential for each parcel", as more fully stated in "City of Bradbury General Plan 2012 Update, Technical Report, Chapter II-9-10.
2. Any and all documents related to any analysis of the following conclusion, "It is questionable that the potential unit density or yield for this area ("Open Space-Undeveloped") would make it economically feasible to initiate a request for development approval," as more fully stated in the "City of Bradbury General Plan 2012 Update, Technical Report, Chapter II-10."
3. Any and all documents related to any analysis of the following conclusion, "The area ("Open Space-Undeveloped") contains 10 to 15 significant ridgelines that are protected from development", as more fully stated in the "City of Bradbury General Plan 2012 Update, Technical Report, Chapter II-10."

¹ As used in this request, the term "public records" shall have the meaning set forth in *Government Code* section 6252(e) and includes e-mail and other forms of electronic communications.

City Clerk
City of Bradbury
October 25, 2013
Page 2

4. Any and all documents related to any analysis of the following conclusion, "The area ("Open Space-Undeveloped") contains three blue-line streams that are protected from development activity", as more fully stated in the "City of Bradbury General Plan 2012 Update, Technical Report, Chapter II-10."

5. Any and all documents related to any analysis of the following conclusion, "Therefore, the City has recognized that this area ("Open Space-Undeveloped") will most likely remain in its current natural and undeveloped configuration without further environmental analysis", as more fully stated in the "City of Bradbury General Plan 2012 Update, Technical Report, Chapter II-10."

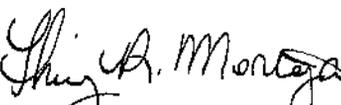
To the extent that there are public records, or portions thereof, which the City claims are exempt from disclosure and seeks to withhold, please state which public records are to be withheld and include for each document the basis for the exemption claimed by the City, as required by *Government Code* section 6255. While doing so, please produce the public records that the City does not claim are exempt.

I understand that a response to this request can take place up to ten (10) days after the receipt of this letter pursuant to *Government Code* section 6253. We nonetheless would appreciate it if you are able to respond sooner than that. Please provide your response to this letter via facsimile to my attention at (714) 852-6899, and mail the original to the address provided above. Please also include in your response letter the copying costs for the public records that will be produced.

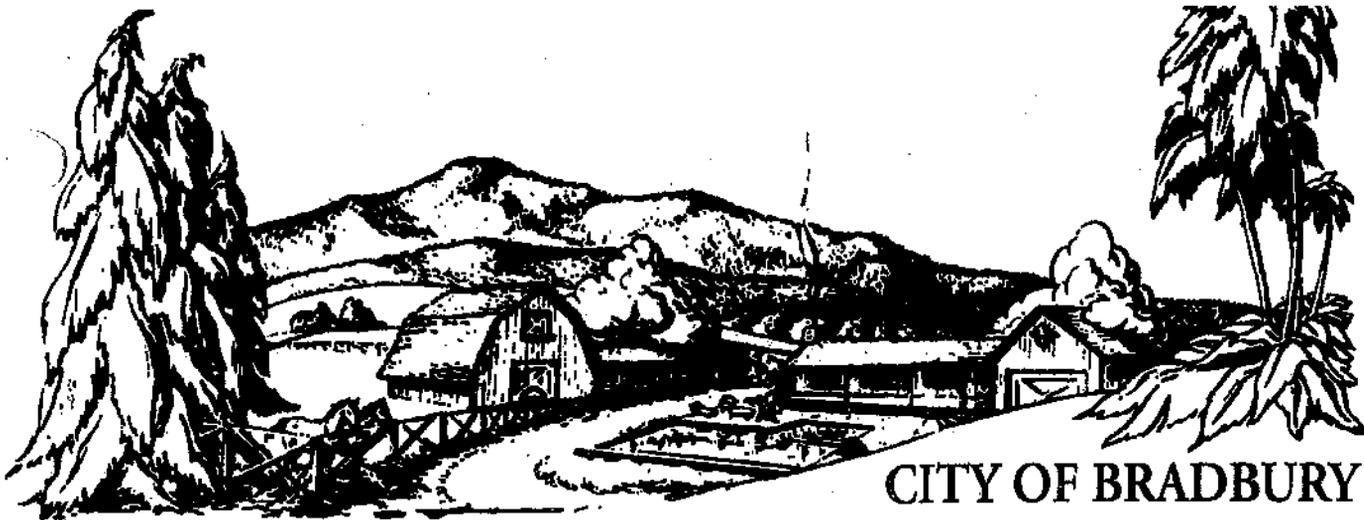
To the extent that any of these requests make it difficult for you to locate an identifiable record, we hereby ask, pursuant to *Government Code* section 6253.1, that you contact us in order to assist us in identifying records and information that are responsive to this request, or for the purpose of this request. Thank you for your attention to this matter. If you have any questions, please contact me at the number provided above. We look forward to receiving the public records within the statutorily mandated timeframe.

Very truly yours,

ALVARADOSMITH
A Professional Corporation


Thierry R. Montoya

TRM:dh



November 5, 2013

AlvaradoSmith
ATTN: Thierry R. Montoya
1 MacArthur Place, Suite 200
Santa Ana, California 92707

SENT VIA FAX to Mr. Montoya [714-852-6899]

RE: Public Records Act

Dear Mr. Montoya:

This letter is in response to your Public Records Act requested and received on dated October 25, 2013.

In accordance with Government Code Section 6253, the City of Bradbury needs additional time to respond to your request in order to locate documents, and in order to determine which of the requested records are disclosable pursuant to Government Code section 6254.

We expect to make a determination by November 21, 2013 as to which documents will be supplied and in what manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michéne Keith', is written over the word 'Sincerely,'.

Michéne Keith
City Manager
City of Bradbury

City Council Report

General Plan 2012-2030 Update

Public Records Requests

EXHIBIT "DD"

Alvarado Smith Letter

November 8, 2013



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

November 8, 2013

VIA FACSIMILE (626) 303-5154 AND U.S. MAIL

City Clerk
City of Bradbury
600 Winston Avenue
Bradbury, CA 91008

Re: *Public Records Act Request*

Dear City Clerk:

By this letter and pursuant to the California *Public Records Act* and California *Government Code* sections 6250-6270, I request, on behalf of D&M Investments, Inc. that the City of Bradbury ("City") provide me with copies of the following public records:¹

1. Any and all documents related to any grading activity (road, pad or otherwise) requested, or undertaken by City Planning Commissioner Frank Hernandez within the last four-(4) years on property that he owns, or has a claimed interest in, within City of Bradbury limits. This request would include, but not be limited to, the following types of documents: drawings; plans; permit[s]; application[s]; internal City review; building department review; public agendas; planning commission review and/or approval; City Council review and/or approval; lot line adjustments; permit fee assessment and payment; writings (notes, meeting minutes, emails, phone messages, writings of any kind) between Commissioner Frank Hernandez, or any agent on behalf of Mr. Hernandez, and any City representative; writings (notes, meeting minutes, emails, phone message, writings of any kind) between Commissioner Frank Hernandez, or any agent on behalf of Mr. Hernandez, and any member of the City Council; writings (notes, meeting minutes, emails, phone messages, writings of any kind) regarding any public comment on the grading; writings (notes, meeting minutes, emails, phone messages, writings of any kind) regarding any complaint made by anyone to any City representative regarding the grading.

¹ As used in this request, the term "public records" shall have the meaning set forth in *Government Code* section 6252(e) and includes e-mail and other forms of electronic communications.



City Clerk
City of Bradbury
November 8, 2013
Page 2

2. Any and all documents listing City Planning Commissioner Frank Hernandez's personal conflicts of interest within the last four-(4) years.

To the extent that there are public records, or portions thereof, which the City claims are exempt from disclosure and seeks to withhold, please state which public records are to be withheld and include for each document the basis for the exemption claimed by the City, as required by *Government Code* section 6255. While doing so, please produce the public records that the City does not claim are exempt.

I understand that a response to this request can take place up to ten (10) days after the receipt of this letter pursuant to *Government Code* section 6253. We nonetheless would appreciate it if you are able to respond sooner than that. Please provide your response to this letter via facsimile to my attention at (714) 852-6899, and mail the original to the address provided above. Please also include in your response letter the copying costs for the public records that will be produced.

To the extent that any of these requests make it difficult for you to locate an identifiable record, we hereby ask, pursuant to *Government Code* section 6253.1, that you contact us in order to assist us in identifying records and information that are responsive to this request, or for the purpose of this request. Thank you for your attention to this matter. If you have any questions, please contact me at the number provided above. We look forward to receiving the public records within the statutorily mandated timeframe.

Very truly yours,

ALVARADOSMITH
A Professional Corporation

Thierry R. Montoya

TRM:dh

City Council Report

General Plan 2012-2030 Update

Public Records Requests

EXHIBIT "EE"

Robert Bodkin Letter

November 11, 2013

Michelle Keith

From: Claudia Saldana
Sent: Monday, November 11, 2013 11:13 AM
To: Michelle Keith; Cary Reisman; Anne McIntosh; Kevin Kearney
Subject: FW: July PC Minutes
Importance: High

From: Robert Bodkin II [mailto:r.bodkin@att.net]
Sent: Friday, November 08, 2013 11:08 AM
To: Claudia Saldana
Subject: Re: July PC Minutes

November 8, 2013

Claudia

Thank you for the minutes, and by the way they are not on the City Web Site.

In review it appears that on July 24, 2013 meeting a motion was made by Mr. Hernandez on the General Plan 2012-2030, and again on August 28, 2013 Mr. Hernandez seconded the motion recommending that the City Council adopt the Bradbury General Plain 2021-2030 Update. When the results of the Bradbury General Plain 2021-2030 Update has direct impact on the Commissioners Hernandez property as it creates open space that abuts his property and of which he has graded a road for access onto the adjoining proposed open space property for his personal use, of which we notified the City Manager and Mr. Meyer's of that no grading permit existed and did cause damage to our property. Thus the vote was not in compliance with California Political Reform Act.

Therefore Mr. Hernandez should have abstained from the vote and since their needed to be a quorum the vote is illegal and the item needs to be sent back to the planning commission.

Thank you

Robert W. Bodkin II
 Broker
 B.R.E. Lic. #00543199

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 Office (626) 285-9991, Fax (626) 2285-0053

Past President West San Gabriel Valley Association of Realtors
President Kiwanis Club of San Gabriel
President Cala Figuera Foundation

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11/15/2013

From: Claudia Saldana <CSaldana@cityofbradbury.org>
To: "r.bodkin@att.net" <r.bodkin@att.net>
Sent: Thursday, November 7, 2013 10:16 AM
Subject: July PC Minutes

Attached please find the minutes of the July 24, 2013 Planning Commission meeting. There was no meeting in September.

Sincerely,
Claudia Saldana
City Clerk

City Council Report

General Plan 2012-2030 Update

Public Records Requests

EXHIBIT "FF"

Glenn Chadwick Request

November 13, 2013

Claudia Saldana

From: Glenn Chadwick <GChadwick@bch-law.com>
Sent: Wednesday, November 13, 2013 12:59 PM
To: Claudia Saldana
Subject: Nov 19 City Council Meeting - Proposed General Plan 2012-2030 Update

Dear Ms. Saldana,

My siblings John Chadwick, Bill Chadwick, Anne Chadwick, and I own land in Bradbury Estates, which would be affected if the City approves the Proposed General Plan 2012-2030 Update (Community Resources Element). I understand that the City Council has this matter on the agenda for its November 19 meeting, and if so, we would like to provide written comments prior to that meeting.

I have a copy of the Plan (the Community Resources Element portion) dated May 28, 2013, but I don't think this is the most recent version. Could you please email me the current version, the Update?

Also, could you please send me (or provide a link to) the November 19 agenda? I have not been able to find it on the City website.

Thank you very much. Please feel free to contact me if you have any questions.

-Glenn Chadwick

Glenn D. Chadwick
Beattie, Chadwick & Houpt, LLP
932 Cooper Avenue
Glenwood Springs, CO 81601
Office: (970) 945-8659
Mobile: (970) 379-9345
Fax: (970) 945-8671
gchadwick@bch-law.com

Planning Commission
February 26, 2014 Report

General Plan 2012-2030 Update

EXHIBIT "J"

City Attorney's response letter dated December 6, 2013

WALLIN, KRESS, REISMAN & KRANITZ, LLP

LAW OFFICES

2800 TWENTY-EIGHTH STREET, SUITE 318
SANTA MONICA, CALIFORNIA 90405-8205
TELEPHONE (310) 450-9552
FACSIMILE (310) 450-0805

December 6, 2013

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

Re: City of Bradbury – General Plan Update

Dear Mr. Montoya:

It was apparent at last month's City Council meeting (and in your prior letters) that, regardless of what I stated in our September 16, 2013 letter to you, you still contend the City's true intent is to take away your client's ability to develop its property in accordance with the rules and regulations that exist under the 2007 General Plan and current zoning. We think it is clear that the City Council's intent, at this stage at least, is to refrain from changing the General Plan's goals and policies regarding development of the 302 acres in the northern third of the City. The language may be slightly different, but the intent is not to change the development potential of that land in the 2012-2030 General Plan Update (hereafter "Update").

It was also apparent that, at the meeting, although you claimed to be quoting from the then current language of the proposed 2012-2030 documents, you had not yet actually reviewed the revised versions. You were actually quoting from the Planning Commission's version, not the staff-modified version.

As you know the City Council remanded the matter back to the Planning Commission to have it review the staff changes, to reexamine the issues, and to recommend action anew. In the meantime, the following paragraphs address the issues raised in your spate of correspondence.

The 302 Acres

The northern third of the City, which includes your client's property, is characterized by hillsides and mountains located at the base of the San Gabriel Mountains, which is bisected by numerous intermittent streams. (Final EIR for the Bradbury General Plan (1993), Section 3.1; 1993 General Plan Land Use Element, p. 2-3.) Because of the topography, this area of the City was placed in a Hillside Overlay zone in the 1993 General Plan and required to comply with the City's hillside development standards. (Final EIR, Table 3-2.)

Thierry Montoya
November 20, 2013
Page 2

Although you dispute that your client's property is in a steep hillside area, the facts indicate otherwise. There is an approximate 1,000 foot rise in elevation from where current development stops to the top of the 302 acres. The contour lines shown in the Resources Element, as developed by a Los Angeles County topographical survey, as well as a simple visual inspection show that there are steep hillsides and prominent ridgelines. The ridgelines shown in the Update were identified by a survey conducted by Wildan in the late 1990s. Furthermore, the 1993 and 2007 General Plans (hereafter "General Plan") recognizes that most of the undeveloped open space areas in the City are unsuitable for development due to steep slopes, unstable ground conditions, or because the areas serve as water drainage courses. (General Plan Open Space Element, p. 4-1.)

Change of Land Use Designation and General Plan Overlays

The existing land use designation for your client's property is "Estate 5 Acre/Hillside Development Overlay." As the draft Update was originally proposed, the 302 acres was to be changed to "Open Space, Hillside Preservation." However, in order to make clear that the term "preservation" was never meant to preclude development, the 302 acres is now designated as "Open Space - Privately Owned Undeveloped."

In addition to the Previous and Existing General Plan placing the 302 acres in the Hillside Overlay area, this acreage was also identified as being: in the Resource Management Overlay zone due to high ecological sensitivity, including significant ridgelines that warranted preservation. The Conservation Element of the General Plan establishes guidelines to develop in this area. (General Plan, pp. 5-7 -- 5-8.) These same exact guidelines, nothing more, are carried over into the Update for development in this overlay area under the Community Resources Element. Similarly, the General Plan currently places the 302 acres in the Safety Management Overlay zone and recognizes the area as being subject to wildfire and surface rupture. (Final EIR, Sections 3.1, 3.3; General Plan Conservation Element; General Plan Safety Element.) While these maps have been refined in the Update, the overlays remain the same. The 302 acres, along with most of the City, have been placed in a Very High Fire Hazard Severity Zone by the County of Los Angeles Fire Department as shown on H-S Exhibit Safety No. 1 and the area remains in an earthquake induced landslide zone as shown on H-S Exhibit Safety No. 3. Contrary to your allegation, the Update does not place a new Open Space overlay area over this property. Exhibit CR Open-Space No. 2 simply shows where the existing open space is within the City.

Thierry Montoya
November 20, 2013
Page 3

Zoning

As we set forth in our previous correspondence and as planning staff has informed your client's representatives, the zoning of the property as it exists today is A-5/with a Specific Plan Overlay. This same zoning that is shown on the Official Zoning Map dated March 20, 2007 is shown on Exhibit LU No.3 of the Update. It is the zoning, and not the General Plan, which places the Specific Plan Overlay on the 302 acres. The Update makes clear that this zoning remains compatible with the renamed land use designation.

There are no changes contemplated to the zoning ordinances; in order to develop the property your client will have to comply with the A-5 zoning and the hillside development standards of the Bradbury Development Code. Additionally, because the property is zoned with a Specific Plan overlay, it will also be necessary to develop a specific plan for the development.

It should be noted that the purpose of the specific plan requirement is not to place additional burdens on the property owners in this area, but to assist the owners in that area with the means of providing flexible development standards. The City is cognizant of the fact that it would be difficult to develop the property in accordance with the A-5 and Hillside Development standards given the need to protect, to the extent feasible, prominent topographical features as set forth in Section 9.06.020.040 of the Development Code. The use of a specific plan allows the modification of these standards; for example, instead of developing only one home on 5 acres, with a specific plan a cluster development could be created in order to protect significant ridgelines and streams.

Despite our previous correspondence pointing out that the 302 acres has been in a Hillside Development Overlay area in both the Previous and Existing General Plans, you continue to assert that your client's property has never been in an area designated for hillside preservation. This is simply incorrect; however, as mentioned above, in order to try and alleviate your concerns that "preservation" means no development, we have eliminated the use of the term "preservation" to designate the 302 acres.

In fact, preservation of hillsides is a goal set forth in the General Plan and this goal continues to be recognized in the Update. Moreover, the current Hillside Development standards of the Development Code require a certain percentage of hillside property to be set aside (preserved) in its natural state. The percentage is based upon the slope of the property. As part of a development plan private property owners will conduct studies which will establish the exact slope in the area to be developed.

Thierry Montoya
November 20, 2013
Page 4

The goals set forth in the Update relating to the "transfer of development rights" and "preserving hillside and open space" do not mean that development is prohibited in the 302 acres and you have taken the language out of context. Instead, a transfer of development rights is something that could be used with a specific plan to allow additional development on one parcel in exchange for no development on another. And as explained immediately above, hillside preservation is required under the City's Development Code. Additionally, it should be remembered that the 302 acres includes more than your client's property and the Update is meant to apply to the entire City.

Hillside Preservation and Goals

You have continued to assert that the City never before placed your client's property in a hillside preservation area. Although the land use designation did not include the term "preservation," there is no doubt that the protection of the northern hillsides has always been, and continues to be, an important goal of the City.

Hillside Development Standards – Chapter 9.06.020

As set forth above, the 302 acres in the northern portion of the City is in a Hillside Overlay area that is required to comply with the City's Hillside Development Standards. The policies of the hillside development standards are to "preserve" the existing character, which includes the visual appearance; prominent land forms, including significant ridgelines and watercourses are to be maintained. (Bradbury Municipal Code ("BMC") § 9.06.020.040.) Any lot that has at least a 10% slope is required to preserve at least 50% of the net lot area in its natural state. (BMC § 9.06.020.100B.) Further, dedication of development rights for all proposed open space parcels part of a multiple-lot subdivision is required. (BMC § 9.06.020.190D.) The objectives that the Planning Commission is to use in evaluating hillside development includes preservation of natural features, as well as natural drainage preservation and landmark preservation such as significant ridgelines and rock outcroppings.

General Plan Goals and Objectives of Previous and Existing General Plan

The Previous and Existing General Plan includes the objectives of: preserving environmental resources; maximizing and preserving existing natural open space; and preserving natural and ecological resources by making sure that future development was sensitive to and maintained such natural resources. (2007 General Plan Update, pp. 1-2 and 1993 General Plan Update, pp. 1-2, 1-4, 1-5.) Both the Previous and Existing General Plan provides that there are significant ridgelines that warrant preservation and set forth standards for development in the Conservation Element. (General Plan, p. 2-5.) The opening paragraph of the Open Space Element for the

Thierry Montoya
November 20, 2013
Page 5

Previous and Existing General Plan specifically states, "[a]s a limited and valuable resource in the City, open space areas must be preserved in spite of development pressures." The 302 acres was included as part of the identified open space. (General Plan, p. 4-2.) Similarly, a major goal of the Conservation Element of the Previous and Existing General Plan is to protect the quality of the physical environment through conservation and the hillside areas were recognized as being ecologically significant. (General Plan, pp. 5-1, 5-7.)

General Plan Goals and Objectives of Update

Although the Update revises the language of the General Plan's goals, objectives and policies, the intent remains exactly the same – to preserve the natural environment to the greatest extent possible. Unfortunately, your letters have taken these items out of context in an attempt to attribute a motive to the City that simply does not exist.

Development Potential

Your assertion that the previous General Plans identified 51 units that could be built in the hillside areas is correct. However, that number was only used for determining future potential development City wide and it was recognized in the Final EIR and the General Plan that the actual number of units that would be constructed in the hillside area would be less than this amount due to development constraints. (Final EIR, Section 3.1.)

The same environmental constraints that existed in 1993 and 2007 continue today and continue to be recognized in the Update. For planning purposes only the City has determined that the growth in the hillside area will be zero during the planning period. However, the text has been amended throughout the General Plan to clarify that although development may be difficult, it is not prohibited.

Need for an EIR

As the Update does not change any of the development patterns of the existing General Plan, there simply are no new changed circumstances which would trigger the need for an EIR and the cases you have cited are inapposite.

Conclusion

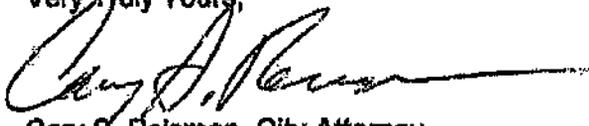
Your correspondence has repeatedly stated that you do not have issues with the development potential of the 302 acres as stated in the previous and existing General Plan. In recognition of your client's apparent, although unfounded, concerns, the City revised the language of the Update to clarify that that there is no intent to prohibit

WALLIN, KRESS, REISMAN & KRANITZ, LLP
LAW OFFICES

Thierry Montoya
November 20, 2013.
Page 6

development in the area, and the City Council sent the matter back to the Planning Commission for its review. If the Planning Commission concurs in the changes, we trust that your client will throw its support behind the City's 2012-2030 General Plan Update.

Very Truly Yours,



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

cc: Glenn Chadwick, Esq.
Richard Bodkin
City Manager
City Clerk

WALLIN, KRESS, REISMAN & KRANITZ, LLP

LAW OFFICES

2800 TWENTY-EIGHTH STREET, SUITE 319
SANTA MONICA, CALIFORNIA 90406-8205
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FACSIMILE (310) 480-0505

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 reoption 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

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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.

WALLIN, KRESS, REISMAN & KRANITZ, LLP

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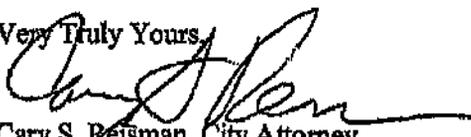
Your letter includes excerpts from the Update for which you allege there is no evidence. However, the statements from the Update are not new and are included within the Current Plan, which was supported by an EIR. These allegations are addressed in the attachment to this letter. However, two other statements 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 re-adoption of the 1993 General Plan. Similarly, the proposed 2013 Update is also a basic re-adoption 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

Allegation	2007 General Plan Evidence to the Contrary
<p>No evidence that the Property had been designated for hillside preservation in the 2007 General Plan</p>	<ul style="list-style-type: none"> • 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 • General Plan Update, p. 4 – map showing Property in Hillside Development Overlay • Land Use Element, p. 2-1 – northern one-third of City consisting of hillsides • Land Use Element – Table 2-2, p. 2-5 – Estate 5 acre designation in Hillside Overlay zone must comply with hillside development standards • Land Use Element, p. 2-5 – northernmost third of City is subject to Hillside Ordinance • Land Use Element – Table 2-3, p. 2-6 – 316 acres in Estate 5 Acre subject to hillside development standards • Land Use Element, p. 2-7 – vacant parcels in hillside areas subject to hillside development standards
<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"> • Land Use Element, pp. 2-1, 2-3 – northern one-third of City is bisected by intermittent streams • 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 • Land Use Element, p. 2-6 – recognizes that Safety Element has identified Safety Management Overlay area for areas subject to wildfire and surface rupture • Open Space Element – Table 4-1, p. 4-2 – 331 acres of vacant land is undeveloped hillside subject to environmental constraints • Conservation Element, pp. 5-4 – 5-5 - identifies biological resources • 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 • Conservation Element, pp. 5-7 – 5-8 – development guidelines set forth for development in the high sensitivity areas • Conservation Element – Exhibit 5-1 – shows Property as being in wildlife habitat resource management area • Safety Element – Exhibit 6-2 – shows Property in hillside/slope failure area

	<ul style="list-style-type: none"> • Safety Element, p. 6-12 – steep slopes (40 – 50%) at extreme risk for wildfire; slopes of 20 – 40% at high risk for wildfire • Safety Element – Exhibit 6-3 – Property within Safety Management Overlay area • Housing Element (2008-2014), pp. 17-18 – recognizes that build-out estimate of 501 dwelling units is not realistic because of environmental constraints • Addendum, p. 3-6 – in describing the biological resources the Addendum cites to the Draft EIR and Initial Study for the 1993 General Plan
<p>No evidence to support that development is deemed physically and economically infeasible</p>	<ul style="list-style-type: none"> • 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 • 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 • 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 • Housing Element (2008-2014), pp. 17-18 – recognizes that build-out estimate of 501 dwelling units is not realistic because of environmental constraints • Housing Element (2008-2014), p. 20 – portion of City with larger lots located in hillside and mountainous areas making high-density development difficult