

Kevin K. McDonnell
KKM@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
JMBM.com

Ref: 57893-0022

June 21, 2007

VIA E-MAIL AND U.S. MAIL

Gregg Vandergriff
B-Permit Section Manager
City of Los Angeles, Department of Public Works
Bureau of Engineering
201 N. Figueroa Street
7th Floor, B-Permit Section
Los Angeles, CA 90012

Re: Demand for B-Permits Issuance
Vesting Tentative Tract No. 35022
Pueblo Subdivision (the "Project")
4999 Lathrop Street

Dear Mr. Vandergriff:

As you know, this office represents Monterey Hills Investors, LLC ("MHI") with respect to the above referenced Project. On behalf of MHI, we demand the outstanding B-Permit(s) be issued forthwith.

As City staff and the City Attorney's office have confirmed, Final Environmental Impact Report No. 172-84 (SUB) (the "EIR") included and analyzed all reasonably foreseeable actions for this development in accordance with the California Environmental Quality Act ("CEQA"). City staff has also confirmed that the EIR, along with subsequent approvals, such as Vesting Tentative Tract Map No. 35022 ("VTTM"), Parcel Map AA-2005-0849, and the City's analysis and approval of the Pullman Street realignment (Council File 05-1524) already considered all relevant grading and street construction issues.

Likewise, City staff and the City Attorney's office have also confirmed that the outstanding B-Permits for the Project are ministerial permits requiring no discretion on the part of City staff. Nothing discussed on the City Council floor yesterday, June 20, 2007, suggested otherwise. As you know, no findings of any kind were made by the City Council at the June 20th City Council hearing on Council File No. 04-1413 supporting a determination that the B-Permits are discretionary.

It is well established that the City does not have the legal authority under CEQA to prohibit the issuance of ministerial permits. See Pub. Res. Code § 21080 (b)(1); Guidelines,

Gregg Vandergriff
June 21, 2007
Page 2

§ 15268. Accordingly, the Bureau of Engineering cannot lawfully withhold the issuance of any outstanding B-Permits for the Project.

Thus, we demand the prompt issuance of any outstanding B-Permits for the Project. If the Bureau of Engineering refuses to immediately issue the B-Permits, we are entitled to a thorough explanation of its reasons for withholding the permits.

Sincerely,



KEVIN K. MCDONNELL of
Jeffer, Mangels, Butler & Marmaro LLP

KKM:kkm

cc: Susan Pfann, Esq. (via e-mail)
Mary Decker, Esq. (via e-mail)

JMBM | Jeffer Mangels
Butler & Marmaro LLP

Kevin K. McDonnell
KKM@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
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JMBM.com

Ref: 57893-0022

July 17, 2007

VIA E-MAIL AND U.S. MAIL

Gregg Vandergriff
B-Permit Section Manager
City of Los Angeles, Department of Public Works
Bureau of Engineering
201 N. Figueroa Street
7th Floor, B-Permit Section
Los Angeles, CA 90012

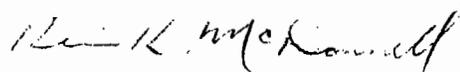
Re: Demand for B-Permits Issuance
Vesting Tentative Tract No. 35022
Pueblo Subdivision (the "Project")
4999 Lathrop Street

Dear Mr. Vandergriff:

As you know, this office represents Monterey Hills Investors, LLC ("MHI") with respect to the above referenced Project. On June 21, 2007, we sent a letter to you demanding the immediate issuance of the outstanding B-Permit(s) for the Project. At the time of this writing, we had received no response.

In our June 21st letter, we cited legal authority providing specifically why the Bureau of Engineering cannot lawfully withhold the issuance of any outstanding B-Permits for the Project. At this time, we again demand the immediate issuance of any outstanding B-Permits for the Project. If the B-Permits are not issued immediately, we demand a thorough explanation of the Bureau of Engineering's intentions in this regard.

Sincerely,



KEVIN K. MCDONNELL of
Jeffer, Mangels, Butler & Marmaro LLP

KKM:kkm

cc: Susan Pfann, Esq. (via e-mail)
Mary Decker, Esq. (via e-mail)

Department of Public Works

Bureau of Engineering
Report No. 1

August 8, 2007
CD No. 14

TRACT No. 35022 PUEBLO AVENUE SUBDIVISION (ELEPHANT HILL)

RECOMMENDATION

Concur with the City Engineer to complete the remaining ministerial actions of issuing the B-Permit for work specified in the conditions for both the Tract (Tr. No. 35022) and Parcel (AA-2005-0849-PMLA) maps, process the Resolution of Acceptance for the dedication of land for the Pullman Street realignment adopted by City Council on September 28, 2005, accept the final parcel map for recordation and to issue all other ministerial permits associated with the development of the Pueblo Avenue Subdivision.

TRANSMITTALS

1. Letter dated July 26, 2007, from Susan D. Pfann, Assistant City Attorney, City Attorney's Office.
2. Letter dated June 21, 2007, from Kevin K. McDonnell of Jeffer, Mangels, Butler & Marmaro, LLP RE: Demand for B-Permits Issuance.
3. Letter dated July 17, 2007, from Kevin K. McDonnell of Jeffer, Mangels, Butler & Marmaro LLP RE: Demand for B-Permits Issuance.

DISCUSSION

The City Council, on appeal, approved Tentative Tract Map 35022 for the Elephant Hill subdivision in 1993, after certifying an Environmental Impact Report (EIR). Mitigation measures described in that EIR were imposed as conditions of approval. In August 2004, after approval by City Council, the final tract map was recorded. In September 2005, the City Advisory Agency approved a Preliminary Parcel Map (AA-2005-0849-PMLA) for the proposed project; no administrative appeal was taken to the appeal board. A final map was submitted for approval and recordation in June 2006, but has not yet been cleared by the City for recordation.

In November 2006, in response to concerns expressed by residents, a motion (Huizar/Hahn) was introduced and referred to the Planning and Land Use Management (PLUM) Committee. That motion, among other things, requested staff to analyze and report to City Council whether a circumstance exists with respect to the proposed development project that "triggers the need for" an additional EIR under the California Environmental Quality Act (CEQA). The motion also requested that "no discretionary,

ministerial action or approval" be granted for the project by the Planning Department, the Department of Building and Safety, or the Bureau of Engineering (BOE) "until the report is presented to Council."

Staff, with the assistance of the City Attorney's Office, conducted research and submitted various reports concluding, in essence, that:

- 1) All the necessary discretionary approvals for the project have been granted and the only permits or approvals remaining for the City to issue were ministerial. Absent a pending discretionary approval, CEQA does not require or allow the City to require an additional environmental clearance; and
- 2) Under the City's CEQA thresholds, any changes to the circumstances under which the project was undertaken were not sufficiently significant to justify the requirement for an additional environmental clearance, even if there were a discretionary approval, which could be withheld until a supplemental EIR was prepared.

The motion was considered by the PLUM Committee after staff presentation and advice, and testimony and written submittals from the public. The PLUM Committee forwarded the motion to City Council without recommendation.

On the June 20, 2007 City Council meeting, there was much discussion about the purported changes in the project. Much of the discussion focused on whether the B-Permits pending before BOE were discretionary within the meaning of CEQA. BOE staff and the City Attorney advised that they were not. Staff of the Department of Building and Safety, Planning Department, and BOE indicated that there were no other discretionary permits required for this project. Although the City Council expressed its concern about the adequacy of the environmental clearance and its desire that an additional EIR be required for the project, the motion it adopted did not direct BOE to withhold the subject permits.

Immediately after City Council's action, the developer wrote a letter (Transmittal No. 2) to BOE demanding that the B-Permits be issued, asserting that all discretionary approvals have been granted and that the B-permit is ministerial and should be issued forthwith. Staff has consulted with the City Attorney, who has advised (Transmittal No. 1) that "these actions are ministerial and therefore you have no authority based solely on CEQA to require an environmental clearance as a condition of your approval of these actions." This is consistent with BOE's understanding and long-standing interpretation of City codes regulating these approvals. The developer, in a letter to BOE (Transmittal No. 3), reiterated their request and demanded the issuance of the B-Permit or respond in a letter with a thorough explanation of the reasons for withholding the permits.

Department of Public Works
Bureau of Engineering
Report No. 1

August 8, 2007
Page 3

Given the above legal advice, the Bureau of Engineering plans to complete the remaining ministerial actions of issuing the B-Permit for work specified in the conditions for both the Tract and Parcel maps, process the Resolution of Acceptance for the dedication of land for the Pullman Street realignment, accept the final parcel map for recordation and to issue all other ministerial permits associated with the development of the Pueblo Avenue Subdivision.

(LMP CWR)

Report prepared by:

Respectfully submitted,

Central District

Lemuel M. Paco, P.E.
District Engineer
Phone No. (213) 482-7049



Gary Lee Moore, P.E.
City Engineer

LMP/GV/07-2007-0169.CEN.fdc

Questions regarding this report
may be referred to:

Writer: Gregg Vandergriff
Phone No. (213) 482-7477
Fax No. (213) 482-7460



(213) 978-8253 - Writers Direct Dial
(213) 978-8090 - FAX

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

July 26, 2007

Gary Lee Moore, City Engineer
Bureau of Engineering
1149 S. Broadway, 7th Floor
Los Angeles, California 90015-2213

Re: Application of California Environmental Quality Act to Issuance
of Bureau of Engineering Approvals for Development at Elephant
Hill (Tract 35022/PPM 2005-0849)

Dear Mr. Moore:

You sought my advice on your legal obligations with respect to various permits and approvals pending before the Bureau of Engineering in light of the motion adopted by City Council on June 20, 2007 concerning the California Environmental Quality Act¹ clearance for this project.

Based on the information provided to us by City staff, it is the advice of this Office that the permits and approvals sought at this time are ministerial. Therefore, CEQA provides no legal authority to require an additional environmental clearance for the permits, because CEQA only applies to discretionary permits. The facts presented indicate that your Department has no legal basis under CEQA to withhold issuance of the permits.

¹Pub. Res. Code Sections 21000 et seq, "CEQA".

Factual Background:

The City Council, on appeal, approved Tentative Tract Map 35022 for the Elephant Hill subdivision in 1993, after certifying an environmental impact report (“EIR”), and imposing mitigation measures for impacts described in that EIR. In August, 2004, after approval by City Council, the final tract map was recorded. In September, 2005, the City Deputy Advisory Agency approved Preliminary Parcel Map 2005-0849 for the above project; no administrative appeal was taken to the appeal board. A final parcel map was submitted for approval and recordation in June, 2006, but has not yet been cleared by the City for recordation.

In November, 2006, in response to concerns expressed by residents, a motion (Huizar/Hahn) was introduced and referred to the Planning and Land Use Committee (“PLUM”). The motion, among other things, requested staff to analyze, and report to Council, whether a circumstance exists under CEQA with respect to the proposed development project that “triggers the need for” an additional EIR. The motion also requested that “no discretionary, ministerial action, or approval” be granted for the project by the Planning Department, the Department of Building and Safety, or the Bureau of Engineering “until the report is presented to Council.” The motion was considered by PLUM, after staff reports and oral presentations, and after testimony and written submittals from the public. PLUM forwarded the motion to City Council without recommendation.

On June 20, 2007, there was lengthy discussion before City Council about the purported changes in the project, and the need for an additional environmental clearance. Much of the discussion focused on whether the B-permits pending before the Bureau of Engineering were discretionary within the meaning of CEQA.

This Office and Bureau of Engineering and Planning Department staff advised Council, in writing and orally, that

1. All the necessary discretionary approvals for the project have been granted, and the only permits or approvals remaining for the City to issue were ministerial. Absent a pending discretionary approval, CEQA does not require, or allow the City to require, an additional environmental clearance;
2. Under the City’s CEQA thresholds, any changes to the circumstances under which the project was undertaken were not sufficiently significant to justify the requirement for an additional environmental clearance, even if there were a discretionary approval which could be withheld until a supplemental EIR was prepared.

Although the Council expressed its concern about the adequacy of the environmental clearance and its desire that an additional environmental impact report be required for the project, the motion it adopted did not direct the Bureau of Engineering to withhold the subject permits.

Immediately after Council's action, the developer wrote a letter to the Bureau of Engineering demanding that the B-permits be issued, and asserting that all ministerial requirements had been met for issuance of the permits.

You advised us later that the following actions are pending before the Bureau of Engineering, and sought our advice on whether CEQA provided a basis for withholding issuance of these permits and approvals.

1. Applications for B-permits for the work necessary to perform the conditions of the final tract map;
2. Applications for B-permits for the work necessary to perform the conditions of the tentative parcel map, after it becomes final;
3. Processing of the Resolution of Acceptance of a dedication of land pursuant to the authorization granted by City Council on September 28, 2005 (CF 05-1524); and
4. Review and acceptance by the City Engineer of the final parcel map, when such is presented by the developer, provided the final map is consistent with the terms of the tentative parcel map approved by the City in September, 2005.

We advised Council earlier that these actions are ministerial, and therefore you have no authority based solely on CEQA to require an environmental clearance as a condition of your approval of these actions.² No facts have come to our attention since that time to cause us to change this advice.

CEQA provides that any decision by a "nonelected decisionmaking body" in either adopting a CEQA clearance for a project, or making a determination that the project is not subject to CEQA, is appealable to the "elected decisionmaking body."

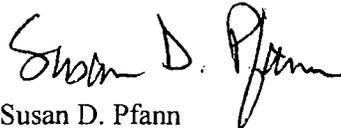
² Our advice was based on our discussions with your staff, our review of the City's codes and Bureau of Engineering's regulations, our review of the project opponents' legal theories, and our legal research. This advice is consistent with the Bureau of Engineering's expressed understanding and longstanding interpretation of the codes regulating these approvals. Attached is the memorandum presented to Council which contains the legal research upon which this advice was based.

Gary Lee Moore, City Engineer
Bureau of Engineering
Page 4

Pub. Res. Code section 21151(c). Thus, whether you issue the permits (or refuse to) in reliance on CEQA, your decision may be appealed to the City Council.

Please contact me at 213-978-8253 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan D. Pfann". The signature is fluid and cursive, with a large initial "S" and a distinct "Pfann" ending.

Susan D. Pfann
Assistant City Attorney

SDP:ff

Elephant hill letter city engineer 7-26-07

MEMORANDUM

To: Jessica Wethington Mclean
Council District 14

From: Susan D. Pfann, Managing Assistant
Real Property/Environment Division
978-8253

Re: B-Permits for Tract 35022

Date: May 22, 2007

This memo is in response to two questions posed in your email request dated May 21, 2007. Your email asked that this Office provide an analysis of whether B permits issued by the Bureau of Engineering (BOE) in connection with the development associated with Tract 35022 are ministerial or discretionary within the meaning of the California Environmental Quality Act (CEQA).

Our short answer is that B-permits associated with this Tract are ministerial, and not subject to CEQA.

Discussion:

As restated, the two questions contained in your email request, and our responses, are as follows:

Question #1:

What does CEQA say about Supplemental Environmental Review - can SEIR be required any time significant information is discovered, or only when significant information is discovered AND a discretionary action is pending.

Response:

The factual inquiry into whether any supplemental environmental review is required by the discovery of significant information is only triggered if a discretionary action is pending. This is because CEQA only applies to discretionary actions by the City. (Pub. Res. Code section 21080(b) ["This division does not apply to any of the following activities: (1) Ministerial projects proposed to be carried out or approved by public agencies."] See also, State CEQA Guidelines 15162(c) ["Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary

approval on that project is required. Information appearing after an approval does not require reopening of that approval." emphasis added.])

Question #2:

Are B-Permits in the City of Los Angeles discretionary or ministerial permits? City Bureau of Engineering staff has indicated they are NOT discretionary, and are ministerial, but the NRDC alleges otherwise and cites codes to support their argument.

Response:

As indicated above, ministerial decisions are not subject to CEQA; therefore no supplemental EIR or other CEQA analysis is or can be required for a ministerial decision. NRDC contends that issuance of B permits are discretionary. It is our opinion that in this case, the B permits are not discretionary, if they are sought in connection with the tract or parcel map approvals that occurred in 1993 and 2005.

CEQA defines "discretionary project" as a project "which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes. . . ." (State CEQA Guidelines 15357) "Ministerial" on the other hand, "means a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. . . . A ministerial decision involves only the use of fixed standards or objective measurements and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out...." (State CEQA Guidelines section 15369.)

The determination of what is ministerial "can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, . . ." (State CEQA Guidelines section 15268(a).) Further, "[w]hether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity." (State CEQA Guidelines section 15200(i)(2).)

NRDC provides two citations to support its statement that B permits are discretionary: (1) LAMC 62.106 (b); and (2) the BOE Permit Manual, Chapter 5, Section 5.5.

LAMC 62.106(b) states:

"Class "B" shall include all permits for work not included in Class "A" except for work for which a revocable permit is issued pursuant to Section 62.118.2 of this Code."

This clearly does not purport to "require the exercise of judgment or deliberation" to grant or not grant a B permit.

City CEQA Guidelines, Article II, section 2.b. lists various types of permits and approvals which the City deems to be ministerial under its laws, as called for in State CEQA Guidelines section 15268(c). Included in that list are the following:

"6) Permits issued by the Department of Public Works as follows:

- a) Class "A" permits for construction or repair of sidewalks, driveways and curbs.
- b) Excavation permits . . .
- . . .
- h) Sewer permits (special connections).
- i) Storm drain connection permits.
- . . .

8) Engineering permits issue[d] In accordance with an entitlement for use previously granted."

Thus, since B permits are not specifically listed as being ministerial, while specified A permits are listed as ministerial, one could infer that B permits may be considered discretionary, provided that such a conclusion is consistent with "authority granted by the law providing the controls over the activity." (State CEQA Guidelines section 15200(i)(2).)

We reviewed with BOE staff the guidelines which BOE uses when reviewing a B permit application, and could not find any requirement that BOE exercise judgment or deliberation in granting a B permit. The manual appears to provide a checklist which, if completed, would dictate the issuance of the permit. It does not appear that the manual, which provides "the controls over the activity", provides the type of authority contemplated by CEQA's definition of a discretionary approval.

The BOE Manual, section 5.5 (cited by NRDC) states as follows:

“5.5 Other Requirements for B-Permits

What environmental documentation will I need for my street improvement project?

As a condition for obtaining a B-Permit, the Applicant will be required to provide information for the preparation of the appropriate environmental document or to complete an Environmental Impact Report (EIR) exemption request form. Should a negative declaration or EIR be necessary, the City must approve it before construction can start.”

It may be that issuance of B permits that do not fall within another “ministerial” listing in the City’s CEQA guidelines may require an environmental clearance, based on the above language, although it is not clear on what authority that statement was based. BOE advised that Class B permits are “engineering permits” that are ministerial in some cases and discretionary in others. BOE uses B permits for many purposes in addition to their use as a process to accept private project related dedication of required infrastructure improvements. As further explained, for projects that do not have entitlements previously granted, the Class B-Permit may be discretionary. However, Class B permits for infrastructure for projects that have a previously granted entitlement are ministerial. BOE staff also explained that if the underlying entitlement has already been obtained, as in the current case, then the only action remaining is the issuance of the B permit for the improvements to the streets, storm drains, sanitary sewer, street lights and retaining walls within the dedicated right-of-way as contained within the conditions of approval of the final subdivision map. In the current situation, BOE is requiring conditions that are strictly based on ministerial engineering standards. See also, BOE website.¹

¹ “A “B” Permit (LAMC 62.106.b) is issued for extensive public works improvements including the widening of streets and alleys, the changing of existing street grade, construction of bridges, retaining walls, and the installation of sewer, storm drains, street lighting, and traffic signals. Construction plans are usually required which must be signed by a California licensed Civil and/or Electrical and/or Traffic Engineer. [B permits are] most frequently issued for public works improvements adjacent to land being developed. In these instances, the extent and type of improvements depend on conditions imposed by the Council, City Engineer, Department of City Planning, or some other jurisdictional body in accordance with the Municipal Code, City Charter, State Law, or City Ordinance.”

The language on the website is consistent with the conclusion that the City does not exercise discretion in granting B permits when they are permits "issued in accordance with an entitlement for use previously granted" because the earlier discretionary approval sets the conditions upon which the City exercises discretion, leaving only fixed and objective standards to be determined via the later issued B permit.

In light of the authorities cited above, we believe that the issuance of B permits in this case falls within the description of an "engineering permit issued in accordance with an entitlement for use previously granted" and therefore issuance of such a permit constitutes a ministerial decision, not subject to CEQA.

/SDP

M:/sdp/ceqa/elephant hill memo re ministerial...

TIMELINE FOR TRACT 35022 - ELEPHANT HILL
May 27, 2007

Background: The Setting

El Sereno is located in Northeast Los Angeles, adjacent to the City of South Pasadena and Alhambra. This densely populated community is characterized by high rates of poverty and low levels of education, as well as a very young and largely non-English speaking, Latino population.

El Sereno is home to Elephant Hill, the largest unprotected hillside open space remaining in Northeast Los Angeles. Comprising 110-acres, Elephant Hill is bounded on the west by Collis Ave, on the south by Cudahy and on the east by Portola; to the north is the border with South Pasadena. Elephant Hill is part of the Repetto Hills which run east from downtown to Whittier.

Generations of residents have enjoyed Elephant Hill as a place for nature exploration and play, walking and hiking. Elephant Hill also supports habitat that is home to coyotes, snakes, lizards, owls and numerous bird species. An assessment undertaken by Audubon biologist Dan Cooper in 2004 and found that Elephant Hill has high local biological importance.

The Repetto Hills are defining icons Northeast LA and a significant natural resource for the City of Los Angeles. This is particularly significant in light of the overwhelming park inequities for children living in these densely populated and highly urbanized areas. Overall, Northeast LA has one of the lowest parkland-to-people ratios in the City of Los Angeles, with under 2 acres per 1,000 population.

Timeline

The following timeline is supported by documents from the City of Los Angeles, the developers, and resident organizers.

1984

Greenhills Investment Company seeks approval from the Los Angeles Planning Department for 30 single family homes on 18.67 acres. The project is revised as a 24-lot subdivision on approximately 15 acres in the northeast corner of Elephant Hill, on the Los Angeles border with South Pasadena.

The City's Environmental Review Committee determines on May 16 that the proposed project may have a significant effect on the environment and requires the preparation of an Environmental Impact Report (EIR). When the zoning of the site was changed from R1 to RE20, the project is re-designed to conform to a low housing density requirement.

1986

Hundreds of condominiums developed in Monterey Hills by the Los Angeles Community Redevelopment Agency sustain severe damage due to subsidence and the soil beneath them begins to sink. The condos were constructed on a hillside less than a half mile from Tract 35022 that, it is later learned, has a natural underground water system in place, similar to that of Elephant Hill.

1989

After a lapse of 5 years, a second Notice of Preparation is developed and circulated for Tract 35022.

1990

A settlement is reached over the sinking Monterey Hills condos; more than two dozen insurance companies and the City of Los Angeles pay \$62.5 million to the residents of the condo development.

1992

A draft EIR for the proposed project is prepared and circulated for public review in early 1992. In March, EIR No. 172-84 (SUB/REC), Pueblo Avenue Subdivision, Final Environmental Impact Report is certified by the Planning Department.

1993

In early 1993, the Planning Department holds a public hearing on proposed Tract 35022. Scores of residents from El Sereno testify in opposition to the proposed project given the unstable Repetto Hills geology as evidenced by the Monterey Hills debacle. Many of the Collis Ave. residents recall shoveling mud out of their homes as a result of the condo landslides.

On March 9, 1993, the Los Angeles Planning Commission issues a decision approving the vesting of Tract 35022 for a maximum of 18-lot single family homes subject to 26 plus conditions of approval.

On June 12, 1993, representatives from three homeowners' associations (Corona Drive, Pullman-Collis, and Guardia) file an appeal against the Commission decision and the June 3, 1993 modifications to the Conditions of Approval. The homeowners' appeal cites inadequate engineering for rain water runoff from the site and potential flooding and land movement.

On July 13, 1993, at the City Council appeal hearing, homeowners ask for 10 houses and express concerns about hillside grading, preservation of open space, the protection of wildlife, increased traffic on narrow streets, underground water systems and flooding.

At the hearing, a deputy from Councilmember Alatorre's office recommends 24 units since this would require less grading than the previously approved 18 units and new conditions to protect existing homes below the proposed project. As a "balanced site," no export of soil would be allowed, thus eliminating the need to haul thousands of tons of soil over Collis and Avenue 60.

One unusual condition, Condition #10, requires that the final map cannot be recorded "until the tentative tract map has been filed with and approved by the City of South Pasadena."

On July 14, 1993, the City Council adopts the Planning Commission's report which certified the EIR, the findings of the Department's Statement of Overriding Considerations (vesting of tract), and denied the homeowners' appeal, thereby approving vesting tentative Tract Map 35022.

1993-2003

Soon after approval of vesting Tract 35022, a recession and real estate crash keep many developers from building in Los Angeles, including Greenhills Investments Company, owners of Tract 35022.

Between 1993 and 2002, the City of LA and the state of California enact various pieces of legislation that extend the life of many tentative tract maps and parcel maps. As a result, tract map 35022 is extended to July 14, 2004, by which time all conditions of approval have to be met or the tract would be invalidated and a new plan required.

In August of 2003, Greenhills Investment Company sells the parcels and entitlements associated with Tract 35022 for \$1.8 million to Monterey Hills Partners, a limited liability corporation owned by William D. Foote and his Newport Beach-based development company SWD Communities.

Foote is one of the largest developers in the West. While his California developments are characterized by controversy, court challenges and government inquiries, he sits on the Executive Committee of USC's Lusk Center for Real Estate and donated \$1 million to the USC School of Planning in 1990.

In December 2003, residents concerned by surveying activity near their homes visit the Bureau of Engineering. They learn that the new owner/developer is taking action to complete the conditions of approval for final recording of Tract 35022 in order to break ground and begin construction of 24 luxury homes priced in the \$750,000 - \$1 million range.

2004

In early January, residents begin a door-to-door effort in the neighborhoods surrounding Elephant Hill to gauge community sentiment about renewed activity on Tract 35022. There is overwhelming opposition to the project.

Residents start organizing and ask the LA-32 Neighborhood Council for a resolution in opposition to the development citing the landslide prone geology; traffic impacts; environmental degradation; and, given a new housing boom and skyrocketing home prices, gentrification of a working class community that historically offered affordable housing to working class residents.

On Tuesday, February 17th the LAPD stops illegal grading by the developer's contract engineer, the J. Byer Group, Inc. after workers are unable to show proof of a grading permit.

On March 3 and again on March 15, resident organizers turn out over 200 residents to two separate LA-32 Neighborhood Council meetings. LA-32 passes a resolution opposing the development after the developer tells audience members that Elephant Hill is not pristine enough for preservation and the luxury home development would help solve their gang problem.

Councilmember Antonio Villaraigosa goes on record in opposition to the development after the March 15th LA-32 Neighborhood Council vote.

On April 17, 75 residents and elected officials attend a rally at the base of Elephant Hill on a rainy Saturday morning. Joining Councilmember Villaraigosa in opposition to Tract 35022 are Assemblymembers Jackie Goldberg (45th) and Carol Liu (44th)--whose districts include portions of Elephant Hill and Tract 35022--as well as three South Pasadena City Councilmembers.

By late June, the developer has met only a handful of the 26 conditions of approval. To preempt the City of South Pasadena from opposing the development per Condition #10, the developer sues the City of South Pasadena. (Monterey Hills Partners, LLC v. City of South Pasadena; City of South Pasadena Planning Commission, Superior Court, Case No. BS090888, June 24, 2004.)

On July 2, the developer files two additional lawsuits, one against the City of Los Angeles' Director of Planning (Monterey Hills Partners, LLC v. City of Los Angeles Director of Planning, Case No. BS090972) and the other against Councilmember Villaraigosa with the intent of coercing the City to expedite approval the conditions, even though the developer would not otherwise met the conditions by the July 14th deadline.

On July 7, the South Pasadena City Council declines its jurisdiction over Tract 35022 upon the recommendation of the City Attorney, eliminating an opportunity to stop the development.

Also on July 7, City Councilmember Antonio Villaraigosa writes to Edmund Yew of the Land Development Group asking for a new and updated EIR or a supplemental EIR for Tract 35022 citing concerns about the report being 12 years old, not reflecting current conditions and specific environmental issues that were left out of the study altogether.

On July 14, the Edmund Yew submits a report that recommends City Council approval of the final map for Tract 35022 and indicates that the "conditions of approval for the tract map have been fulfilled..."

On July 20, the City Council meets in closed session regarding Tract 35022. In public session, the final map for Tract 35022 is approved upon the recommendation of the City Attorney. Councilmembers Villaraigosa and Reyes are the only two Councilmembers who vote against approval of the final map.

On November 16, the developer holds a public meeting at the El Sereno Public Library to discuss his options for the extension of Pullman, including the original alignment following the paper street or a more curved road to conform to the hillsides and avoid high retaining walls. There is no mention made of the City Bureau of Engineering requiring these changes.

Following up on the November 16 meeting, residents meet with Edmund Yew, Avygail Sanchez of CD 14 and developer representatives Ed Davis and Marco Soto at City Hall on Dec. 6th. Residents recommend an alternative to Pullman as the project's secondary access road, one that has less environmental impact. Ed Davis takes the proposal to the developer, who then rejects it. Subsequently, Mr. Yew tells residents that the Fire Dept. would not allow another access road for public safety considerations. Again, no mention is made of BOE requiring these changes.

Throughout 2004, Monterey Hills Partners purchase numerous parcels adjacent to Tract 35022. Residents repeatedly express concern about the piecemeal development plans of Monterey Hills Partners.

2005

During the rainy season, residents notify Edmund Yew on January 14 about evidence of the underground water system that was not identified in the EIR but had been repeatedly cited by residents. Residents ask the City to undertake the necessary due diligence regarding the adequacy of the developer's engineering plans in relation to the environmental factors not addressed in the EIR.

On January 19, in lieu of an independently commissioned report, the City accepts a report by the underground water system written for the developer by his contract engineer, the J. Byer Group. The report references the engineering firm's current observations and tests it conducted in 2004.

Monterey Hills Partners sells Tract 35022 parcels and entitlements for more than \$5 million to Monterey Hills Investors, a new partnership incorporated in November. The controlling partner of Monterey Hills Investors is Paul Feilberg, owner of Mesa Verde Development Inc., an Aliso Viejo-based land development and homebuilding company. (www.mesaverdedev.com)

2006

On Good Friday—April 14—the developers' workers installing fencing around Tract 35022 create a large sinkhole with their backhoe. Efforts to remove the backhoe make the sinkhole bigger; two cranes are required to remove the backhoe.

Residents notify and provide photographic evidence of the sinkhole to the City and call for a halt to the extension of Pullman Avenue as the secondary access road for Tract 35022.

When Bureau of Engineering staff repeatedly fail to respond to requests for information regarding the sinkhole, residents submit a public records request on May 14. Residents gather related public documents on June 8th.

Residents submit public documents to the Santa Monica Mountains Conservancy (SMMC) and the National Resources Defense Council (NRDC) providing evidence of a significantly expanded project—incorporating parcels acquired by Monterey Hills Partners throughout 2004 and 2005.

In late June, Assemblymember Jackie Goldberg, the SMMC and residents submit separate requests for a supplemental EIR to the Director of Planning and the District Engineer. Along with their letter, residents submit extensive documentation about the underground water system, expansion of the project, and previous requests for a supplemental EIR.

Also in June, Monterey Hills Partners transfers ownership of the parcels adjacent to Tract 35022 it acquired in 2004 to El Sereno Partners, a new LLC incorporated with the Secretary of State in June and owned by William Foote of SWD Communities.

Later in the summer, after growing frustrated by the agencies failure to respond to the requests for a supplemental EIR, residents seek the help of the new representative of Council District 14, Jose Huizar.

In the Fall, Jose Huizar announces his re-election campaign for Council District 14. Former Huizar deputy Alvin Parra runs against his former boss.

On November 28, Huizar introduces a motion requiring these agencies to investigate the need for a supplemental EIR and prohibiting discretionary actions or approvals for Tract 35022.

2007

On January 23, after a good showing by supporters, the City Council's powerful Planning and Land Use Management Committee passes Huizar's motion and directs the agencies to develop the required report in 45 days. Despite specific direction from PLUM, the agencies refuse to meet with residents and organizations to learn about their concerns.

In late February, through another public records act request, residents learn that the Bureau of Engineering is getting ready to approve a B-permit for Tract 35022.

On March 6, Jose Huizar is re-elected as Council representative for District 14.

On May 18, just two business days prior to the PLUM hearing where the agency report will be presented, residents and allies meet with CD 14 and City agencies to review the draft report.

At the May 22 PLUM hearing, the agencies present their final report and recommend no SEIR because there is no pending discretionary action before the City for Tract 35022. Residents and allies receive a week's extension to review the report and provide feedback.

Mesa Verde supplies Gregg Vandergriff of the Bureau of Engineering the maps he uses as visual aides during his PLUM hearing testimony.

On May 24, Tract 35022 is placed on the May 29th PLUM agenda as item number 2.

On May 25, NRDC and Chatten-Brown & Carstens submit a letter to PLUM outlining why the B-permit is a discretionary action and, consequently, a subsequent EIR should be required for the current project on Elephant Hill.



NATURAL RESOURCES DEFENSE COUNCIL

CHATTEN-BROWN & CARSTENS

2601 OCEAN PARK BOULEVARD #205
SANTA MONICA, CALIFORNIA 90405
E-MAIL: CBC@CBCEARTHLAW.COM
TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

August 7, 2007

Board of Public Works
Room 361-P, Mailstop 464
200 North Spring Street
Los Angeles, CA 90012-4801

*Re: Proposed B-Permit and Supplemental Environmental Review for Tract
35022 on Elephant Hill in El Sereno (File #: 04-1413)*

Dear Board Members:

We are exceedingly surprised and disappointed to learn that staff is recommending approval of a B-Permit for the development at Tract 35022. On June 20, 2007, the City Council approved a motion introduced by Councilmember Huizar that required supplemental environmental review *before* a B-Permit was issued. No such review has been conducted. Nevertheless, Bureau of Engineering staff recommends that a B-permit be issued. Specifically, staff's recommendation is to "accept the final parcel map for recordation and to issue all other ministerial permits associated with the Pueblo Avenue Subdivision."

Incredibly, staff states "Although the City Council expressed its concerns about the adequacy of the environmental clearance and its desire that an additional EIR be required for the project, the motion it adopted did not direct BOE to withhold subject permits." The desire of the City Council that no B-Permit be issued until environmental review was conducted was clear. It would be a direct contradiction of the intent of the Council's adoption of the motion if this Board approves the B-permit without supplemental environmental review.

Additionally, we have learned that the developer of this property, Monterey Hills Investors, has brought a frivolous suit against the City of Los Angeles, seeking issuance of a B-permit, damages in the amount of \$8 million, and attorneys' fees and costs. If, in light of this lawsuit, the City issues a B-permit without requiring environmental review as contemplated in the June 20, 2007 motion, such an action could be viewed as a significant admission of liability. The requested B-permit must be denied.

Board of Public Works
August 7, 2007
Page 2

At the very least, we ask that this matter be continued until the next meeting of this Board in order to give all parties concerned time to clearly articulate their position, evaluate staff's recommendation, and consider the effect of the Monterrey Hills Investors' lawsuit against the City.

Thank you for your consideration.

Sincerely,

Tim Grabiell, NRDC

Doug Carstens, Chatten-Brown & Carstens



NATURAL RESOURCES DEFENSE COUNCIL

CHATTEN-BROWN & CARSTENS

3250 OCEAN PARK BOULEVARD #300
SANTA MONICA, CALIFORNIA 90405
E-MAIL: CBC@CBCEARTHLAW.COM
TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

May 25, 2007

Planning and Land Use Management Committee
Los Angeles City Council
City Hall
200 N. Spring Street
Los Angeles, CA 90012

Re: Supplemental Environmental Review for Tract 35022 on Elephant Hill in El Sereno (File #: 04-1413)

Honorable Councilmembers:

We write to explain why approval of the B-permit requested for the above-entitled tract map is a discretionary action by the City, triggering the requirement for supplemental environmental analysis, not a ministerial action as concluded by Ms. Susan Pfann of the City Attorney's Office in her May 22, 2007 Memorandum to Ms. Jessica Wethington Mclean of Council District 14.

Question #2 in Ms. Pfann's Memorandum states "[a]re B-Permits in the City of Los Angeles discretionary or ministerial? City Bureau of Engineering staff has indicated they are NOT discretionary, and are ministerial, but the NRDC alleges otherwise and cites codes to support their argument." The Memorandum then addresses two citations that, upon consideration, lead Ms. Pfann to conclude that B-permits are ministerial, i.e., LAMC 62.106 and the BOE Permit Manual, Chapter 5, Section 5.5. (Memorandum, p. 2.) One other critical section, not addressed in the City Attorney's Memo, is LAMC 91.106.4.1. The failure to consider this section may very well be attributed to the fact that the May 22, 2007 Memorandum was apparently in response to a May 21 e-mail from Ms. Wethington McClean. We believe, however, the section is controlling, as discussed below.

Preliminarily, we agree with the City Attorney's statement "since B permits are *not* specifically listed as being ministerial, while specified A permits are listed as ministerial, one could infer that B permits may be considered discretionary. . . ." (Memorandum, p. 3.) But we respectfully disagree with the Memorandum's view that "Class B permits for infrastructure for projects that have a previously granted entitlement are ministerial." (Memorandum, p. 4.) This statement is incorrect because LAMC 91.106.4.1 contains a specific exception applicable in this case, reserving to the City the ability to deny a B-permit for development proposed in an area

subject to slides or unstable soil. The relevant part of LAMC 91.106.4.1 states:

91.106.4.1. **Issuance.** When the department determines that the information on the application and plans is in conformance with this Code and other relevant codes and ordinances, the department shall issue a permit upon receipt of the total fees.

EXCEPTIONS

...
2. **(Amended by Ord. No. 172,592, Eff. 6/28/99, Oper. 7/1/99.)** *The Department shall have the authority to withhold permits where the proposed development is located in an area subject to slides or unstable soil which may have an adverse effect on the proposed development or access thereto, as determined by the Department.* If the apparent safety of the proposed development can be verified pursuant to the provisions of Sections 91.7016.4.2 and 91.7016.4.3 of this Code, the Department shall issue a permit upon receipt of a sworn affidavit which has been recorded by the County Recorder, stating that the applicant is fully aware that the proposed development is located in an area subject to slides or unstable soil which may have an adverse effect on the proposed development or access thereto...

(Los Angeles Municipal Code, section 91.106.4.1, emphasis added.) The italicized portion of the above-quoted section clearly confers discretionary authority upon the City to withhold permits for development. And, as the record indicates, Elephant Hill is an area that is subject to slides or unstable soil which may have an adverse effect on the proposed development or access thereto. Therefore, we believe it is clear that the relevant B-permit is discretionary.

This view is further supported by the California Supreme Court's reasoning in *Haggis v. City of Los Angeles*, which concludes that a building permit is discretionary if it requires an agency determination:

The ordinance begins with a permissive statement of general authority: "The Department shall have the authority to withhold a building permit where the proposed building site is in an area subject to slides or unstable soil." (Mun.Code, § 91.0203(2).) It then provides for two specific respects in which City officers and staff are to exercise their judgment and discretion: first, to determine the location and boundaries of the areas requiring affidavits, and, second, to decide whether the instability of a given property is of such magnitude as to cause an immediate hazard to occupancy of the proposed development. Given the pervasively discretionary nature of the City's authority to withhold a permit for building on unstable property and to determine whether an affidavit should be required, we discern in Municipal Code section 91.0203(2), despite its use of "shall," no clear intent to mandate that the City, without the exercise of discretion or judgment, deny a permit if no affidavit has been recorded.

(*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 506.) Similarly, a prior provision of the Municipal Code, requiring the judgment and expertise of City staff, was found to be discretionary:

At all times the City allegedly violated it, Municipal Code section 91.3011(d)(1) provided: "No building or grading permits shall be issued for construction in active or historic landslide areas until, and unless, stabilization on the entire slide or soil mass on which the property lies can be satisfactorily demonstrated to the Department." . . . The only reasonable interpretation of the ordinance, therefore, is that the applicant must demonstrate slope stabilization to the "satisfact[ion]" of the City's staff. (*Ibid.*) So understood, *Municipal Code section 91.3011(d)(1) explicitly calls upon the judgment, expertise and discretion of the City's staff to evaluate the applicant's showing.*

(*Id.* at 507, emphasis added.)

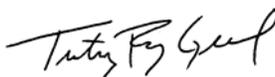
Under LAMC 91.106.4.1 and *Haggis v. City of Los Angeles*, it is clear that the City has the authority to deny the B-permit based on the judgment, expertise and discretion of City staff, thus making it a discretionary action. Therefore, in light of the new information and changes to the project that have occurred since the prior environmental analysis was prepared, a Subsequent EIR should be required for the current project on Elephant Hill.

We realize that time has been short and the City Attorney may not have had sufficient time to review what we believe to be relevant section of the Municipal Code and case law. We would be pleased to answer any questions you may have.

Sincerely,



Doug Carstens
Chatten-Brown & Carstens



Tim Grabel
Natural Resources Defense Council