

February 24, 2009

Re: Extension File No. 09-0082, VTT No. 62900-SL-1A/APCE 2006-8787-ZC

To City Clerk,

I Henry Nunez applicant/owner of the above mentioned property hereby grants an extension to the City Council to hear an appeal for 2400 Allesandro until April 8, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Nunez", written in a cursive style.

Henry Nunez
Applicant/Owner
626-422-7998

SANTA MONICA MOUNTAINS CONSERVANCY

RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207



February 24, 2009

City Council
City of Los Angeles
200 N. Spring Street
Los Angeles, California 90012

**Inadequate Trail and Open Space Condition Language
for Vesting Tentative Tract Map 62900
CF 09-0082 Semi-Tropical Spiritualists Property**

Hon. President Garetti and Councilmembers:

The Conservancy sees this property as critical for a trail connection and additional public open space well connected to Elysian Park. The Conservancy had strongly hoped that the final PLUM committee report would yield condition language that guarantees a public trail and an open space area. It does not. Below proposed basic additions to Conditions 7 and 26 (open space lot) and Condition 34 (trail) provide these guarantees. The public deserves these mitigation measures for an entitlement from four houses by-right to the fifteen units approved by the East Area Planning Commission. CEQA requires their enforceability. If the applicant balks at this simple reinforcing wording, we have to wonder why.

Condition 34 (trail) reads as follows:

That public access is established connecting the open space to Allesandro via the lower portion of El Moran. Applicant will work in collaboration with Council District 13 and the Santa Monica Mountains Conservancy in their efforts to provide and to design a pedestrian trail to connect to the open space lot.

The first major flaw in this condition is that the steep terrain between El Moran Street and the proposed open space lot requires difficult grading and slope stabilization that must be integrated with both the tract grading plan and driveway alignment. The physical limitations of the site require this immediate level of integration. Otherwise, the applicant's only option will be a trail too steep to be safe and too expensive to build. Deferral of the trail alignment and preliminary design is a trap where the public loses permanently. The words "public access established" is vague, weak and not enforceable to a level where a permanent, functional public trail is a guaranteed outcome.

City Councilmembers

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To compound this flawed condition, the project driveway alignment, as proposed, uses a 20-foot-wide and 70-foot-long section of the El Moran Street City-owned right-of-way for a private driveway. The driveway location currently consumes the only terrain with a mild enough grade to permit a trail as addressed in Condition 34. How can a mitigation measure suggest a trail connection made topographically impossible by a gift of a public real estate asset to a private party? The applicant must build and dedicate the trail as a pre-condition of map recordation to assure that the trail is feasible.

To guarantee a trail as addressed by Condition 34 it must be modified (underlined) as follows.

That public access is established connecting the open space to Allesandro via the lower portion of El Moran. Applicant will work in collaboration with Council District 13 and the Santa Monica Mountains Conservancy to guarantee construction of a suitable trail prior to tract map recordation. Both the final tract map and grading plan must incorporate a continuous trail alignment from lower El Moran Street through open space lot No. 16, to upper El Moran Street. Trail grade shall not exceed 15 percent in any location with no steps permitted. Finished trail tread width shall not be less than six feet wide. Steel safety rails shall be provided as deemed necessary by the City Engineer. A trail easement with a width of no less than ten feet shall be granted to the Department of Parks and Recreation or the Mountains Recreation and Conservation Authority (MRCA) prior to tract map recordation. If the easement is not accepted by a public agency within 90 days of being offered in writing, said trail shall remain as part of the fee simple land owned in common by the required Homeowners or Maintenance Association.

The MRCA adopted a resolution dated February 11, 2009 authorizing acceptance of said trail easement if offered.

Conditions 7 and 26 (open space lot) read as follows:

No. 7 - Owners of the property record a Covenant and Agreement together with the legal description and map of said lot 16 and public access easement, satisfactory to the City Engineer stating that proposed lot 16 shall be maintained and preserved as a dedicated open space lot in perpetuity running with the land.

City Councilmembers

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No. 26 - That parcel 16 (open space lot) either be gifted as an open space preserve or that it be deed restricted as a public space and maintained by a home owners association established as part of this development. The parcel shall also be in compliance with condition No. 7.

Although the combination of these two conditions insure that a house or tennis court will never be built on lot 16, they provide zero guarantee that the property will remain open to reasonable daytime public use 365 days a year, in perpetuity. No guarantee is provided that the site will retain wildlife habitat and be accessible to native animals.

The Homeowners Association or Maintenance Association could claim that the public is a nuisance and fence the majority of the open space lot. Said association could then progressively limit the hours and conditions of public access. Fear of liability from public use could increase that reduction of public access. Public access on private lots is a poor mixture to count on. The actual level of public access guaranteed in the conditions is not defined enough to provide any level of assurance. There must be a permanent prohibition against fencing any portion of lot 16 except with post and rail fencing to define a boundary and let animals pass through. Such fencing may be critical to prevent dumping.

To guarantee full public access to Lot 16 as addressed by Conditions 7 and 26 they must be modified (underlined) as follows.

No. 7 - Owners of the property record a Covenant and Agreement together with the legal description and map of said lot 16 and public access easement, satisfactory to the City Engineer stating that proposed lot 16 shall be maintained and preserved as a dedicated open space lot in perpetuity running with the land. Said Covenant and Agreement shall be recorded prior to map recordation.

No. 26 - That parcel 16 (open space lot) either be gifted as an open space preserve or that it be deed restricted as a public space and maintained by a home owners association established as part of this development. The parcel shall also be in compliance with condition No. 7. Said recorded deed restriction shall allow public access on parcel 16 from sunrise to sunset 365 days a year. Said recorded deed restriction shall not allow any fencing on parcel 16 except post and rail fencing not to exceed 4.5 feet in height with a maximum of three rails the lowest of which shall not be less than 18 inches about finished grade.

City Councilmembers

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We urge the Council to require the exact proposed modifications to the conditions put forth in this letter, thus granting the appeal in part, or to send the file back to the Planning for further review and analysis. In such case, specifically, Planning should be asked to determine whether the Mitigated Negative Declaration sufficiently addresses aesthetics, biological resources, and geology and soils, and whether further clarification of mitigation measures is necessary.

To truly provide the public open space and habitat mitigation commensurate with the project impacts, the applicant should voluntarily agree in writing to offer to dedicate a conservation easement over the entirety of lot 16 to the MRCA or to dedicate the lot in fee simple to the MRCA prior to map recordation. The MRCA adopted a resolution dated February 11, 2009 authorizing acceptance of such a conservation easement or fee simple dedication. Said conservation easement shall prohibit any fencing (except 4.5-foot tall – three-rail post and rail fencing), planting any non-native plants, any lighting, any retaining wall not permitted in 2009, any storage of materials, or any utilities. For the MRCA to take the responsibilities of fee simple ownership, the resolution requires a \$17,000 annual maintenance payment to the MRCA to be irrevocably written into the CC&Rs for the Maintenance Association required for the tract. Financial details of this proposal were provided to the Councilmembers and staffs of Districts 13 and 2 last week.

Please address any questions to my attention at the above address and by phone at (310) 589-3200 ext. 128.

Sincerely,



PAUL EDELMAN

Deputy Director

Natural Resources and Planning

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Sincerely,



PAUL EDELMAN

Deputy Director

Natural Resources and Planning

Diane Edwardson

2630 Corralitas Drive, Los Angeles, CA 90039
phone: (323) 666-1392, cell: (213) 910-9826
diane.edwardson@earthlink.net

City Council President Eric Garcetti
City Councilmembers
200 N. Spring St.
Los Angeles, CA 90012

Re: CF 09-0082 in Council 2-25-09
VTT 62900-SL-2A
APCE 2006-8787-ZC
ENV 2005-9337-MND-REC
2400 Allesandro St., 2005 & 2021 W. El Moran St.

February 24, 2009

Council President Garcetti:

I urge you to grant the appeal by Edwardson, Ortiz & Parisi and deny the subdivision and zone change for 2400 Allesandro, 2005 & 2021 El Moran in the Semi Tropic Spiritualists' Tract.

I am unable to attend the City Council meeting on February 25, 2009 due to health reasons, so please consider this letter my testimony.

The February 10, 2009 conditions from City Planning for both the Vesting Tentative Tract and the Zone Change continue the pattern of errors, omissions and conflicting conditions that were thoroughly discussed in our original appeal dated May 9, 2008. A new Q condition was added with regards to Modjeska St, over which City Planning does not have the authority to make. Mitigations for grading the entire slope and removing around 60 significant and native trees are inadequate. Revisions to conditions, the MND and Findings of Fact (as required by CEQA) requested by the East Area Planning Commission (EAPC) are incomplete. Additionally, there has been no mitigation for impacts to the Rim of the Valley Trail Corridor.

New Q Condition #12: Modjeska St.

The Feb.10, 2009 conditions from City Planning include a Q condition that Modjeska St. remain unimproved to serve as a wildlife corridor. While this is an admirable idea, the fact remains that City Planning does not have the jurisdiction to make that decision. This condition needs to be vetted publicly by the appropriate City Department.

Most importantly, there are 7 landlocked lots that front on the unbuilt 40'-wide right-of-way for Modjeska St. adjacent to this subdivision. If a developer wanted to build those landlocked lots, s/he would need to build a public staircase since the right-of-way is far steeper than a 15% grade. The condition also does not state which portion of Modjeska St. remain unimproved (between Sunflower and Peru St.).

Further, if Modjeska is to remain unimproved (once vetted properly), there needs to be a Q condition requiring the homeowners' association for the new subdivision to maintain the Modjeska right-of-way in perpetuity and remain open to the public.

Note: the developer's plan calls for grading and a drainage bench within the Modjeska St. right-of-way. In fact, there has been no discussion of the number of significant and protected native trees in the right-of-ways and paper streets of Modjeska, El Moran, Alvarado and Peru Streets which may be affected by the grading involved with this project.

Thus, mitigation monitoring per Q Condition # 7 should be expanded to include the adjacent right-of-ways/paper streets of Modjeska, El Moran, Alvarado and Peru Streets

City Planning omitted amendments to conditions, the MND and Findings of Fact that the East Area Planning Commission (EAPC) required in their hearing of the case on September 24, 2008.

The MND was never revised per the EAPC's instructions with regard to significant effects on the Santa Monica Mountains Conservancy (SMMC) Rim of the Valley Trail Corridor. This fact was consistently pointed out throughout the public review in writing, not only from the SMMC (Feb., 27, 2006) but also in my own letters to City Planning dated Feb. 22, 2006, Nov. 28, 2006, Nov. 14, 2007, and our appeals dated May 9, 2008 and December 29, 2008. The conditions are inadequate to protect and construct access via a trail to the open space lot.

Nor was the MND revised per the EAPC's instructions with regard to the significant effects on wildlife from grading and tree removal both short and long term. While a biologist's report is required, there is nothing requiring implementation of the biologist's recommendations via a Q condition.

The EAPC also required City Planning to update the conditions to reflect the appropriate protected native tree ordinance and its appropriate replacement ratios. While the outdated oak tree ordinance was removed from the conditions, the current ordinance number was never added to the Q conditions nor to the conditions for the Vesting Tentative Tract. Nor were appropriate tree replacement ratios reflected in the final report from City Planning dated February 10, 2009. The conditions only discuss oak tree replacement ratios, not protected native tree replacement ratios.

The mitigations do not go far enough with regard to tree replacement. The community will have to live with dramatically reduced tree canopy for decades in a neighborhood that is heavily impacted by pollution from the adjacent 2 & 5 Freeways. Trees planted today will not reach the size of the existing significant trees in our lifetime. Cal Trans and the MTA both admit that all options for the redesign of the 2 Terminus (including the "do nothing" option) will put more traffic idling on the adjacent southbound lanes of the 2 Freeway. This is not the time to be significantly reducing tree canopy in the neighborhood.

Loss of 3 acres of LA River watershed, due to the grading requirements, means the slopes will not return rainfall to the watershed, but send more polluted water into the storm drains. I brought up this issue in all my aforementioned letters.

While we wish anything constructed on the site to be safe, just because the Grading Division approves a plan does not make it an environmentally sound plan. To further illustrate this point, photographs, section cuts from the developer's grading plan and an overlay of the subdivision on a satellite photo were submitted by Edwardson, Ortiz & Parisi to PLUM on February 3, 2009.

If you choose to permit this subdivision and zone change, in addition to the aforementioned corrections, there should be a Q condition requiring the subdivision's homeowners' association

to maintain, in perpetuity, Lot 16, the "open space lot," as well as Modjeska St. and El Moran St. right-of-ways adjacent to the property. It should include language to prevent the fencing off of public access to Lot 16.

The zone change and subdivision should only be allowed if Lot 16, the open space lot is donated or dedicated in perpetuity to a public parks agency. This fact was brought up at the initial public hearing and is included in my letter on Nov., 14, 2007 to the Advisory Agency.

Further Administrative Issues:

The conditions between the Zone Change and the Vesting Tentative Tract don't always match up by number but are repeated in both. Unfortunately this is just another example of the pattern of errors, omissions and conflicting conditions that makes review of this project extremely difficult for the public. I will only cite the most egregious mistakes in this letter and I am attaching a letter I sent to Council President Garcetti dated Feb. 8, 2009 detailing the changes that should be in the Vesting Tentative Tract. These should also apply to the Q conditions.

In both the Q condition #15 MM-5, MM-6 & MM-8 and the Vesting Tentative Tract Conditions #24 MM-5, MM-6, & MM-8, as well as Condition #17, should include references to the protected tree ordinance by LAMC number and the appropriate replacement ratios per the ordinance. References to oak trees must be replaced with "protected native trees."

Some of the conflicting conditions must be boilerplate solutions, but conditions such as MM-1 that "grading be kept to a minimum," is laughable when you realize the grading plan calls for a complete scraping of Lot 16, the "open space lot." An estimate of the number of cubic yards of cut has never been provided by the developer. Yet in this proposal, grading has the most important environmental impacts that were not properly vetted under CEQA. The grading issue was consistently brought up in my letters to City Planning dated Feb. 22, 2006, Nov. 28, 2006, Nov. 14, 2007, Feb. 7, 2008 and our in our appeals dated May 9, 2008 and December 29, 2008

Additionally, I have serious concerns as there has been no plan for a retention method of the uppermost portion of Lot 16 adjacent to El Moran and Peru streets, where the heritage oaks and significant California Black Walnuts grow. Those streets were cut around 1905 and paved in the 1920s. El Moran has been collapsing into Lot 16 ever since. I would urge further review of how the grading of Lot 16 will affect the slope between Lot 16 and El Moran and Peru Streets.

The zone change should NOT be allowed without the Vesting Tentative Tract. Both decisions have many of the same conditions and it is significant that they coordinate properly. So I strongly urge the following be added as a Q condition:

"The vesting of this tentative tract map & granting of any zone change is solely applicable to the tentative tract plan as currently proposed & the subject of these applications specifically including but not limited to density, lot sizes, massing and height limitations."

I urge you to grant the appeal by Edwardson, Ortiz & Parisi and deny the subdivision and zone change for 2400 Allesandro, 2005 & 2021 El Moran; VTT 62900-SL & APCE 2006-8787-ZC.

Sincerely,

Diane Edwardson

Transited via email 2-24-09

Enclosure: Feb. 8, 2008 - Edwardson letter to Garcetti