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**VIA HAND DELIVERY**

PLUM Committee  
Honorable Ed P. Reyes, Chair  
Honorable Jose Huizar  
Honorable Paul Krekorian  
Los Angeles City Hall, 3rd Floor  
200 North Spring Street  
Los Angeles, CA 90012

Date: 7-27-10  
Submitted in PLUM Committee  
Council File No: 10-1001  
Item No.: 3  
~~Deputy:~~ submitted by public

Re: CPC-2010-581-CA  
Objections to Baseline Hillside Ordinance

Honorable PLUM Committee Members:

This firm represents various property owners in the City of Los Angeles. This correspondence constitutes our initial written objections regarding the Baseline Hillside Ordinance (“BHO”) and the approval a Negative Declaration for the proposed ordinance. As written, the BHO is inconsistent with the Los Angeles General Plan. This inconsistency leads to a fair argument that adoption of the BHO will have potentially significant environmental impacts, requiring the preparation of an EIR.

The inconsistency between the BHO and the Los Angeles General Plan results from the “one size fits all” approach that the BHO takes. While Objective 3.5 of the Land Use Element and corresponding policies are designed to ensure that new single-family residential development is compatible with the surrounding neighborhood, the unintended consequence of the “one size fits all” approach may be the opposite in some communities. What works in La Tuna Canyon may not work in Bel Air or Holmby Hills. In discussions of mansionization, we sometimes forget that there are neighborhoods within the City of Los Angeles where very large homes are the norm. The BHO potentially prohibits homes of the size and scale of those that currently exist in those neighborhoods, creating the disharmony of scale and character that Objective 3.5 and corresponding policies seek to prevent. Indeed, even the BHO itself implicitly acknowledges that inconsistencies could occur with a city-wide “one size fits all” approach by exempting the areas already covered by the Northeast Los Angeles and Oaks Hillside plans, which also raises a potential piecemealing argument as to later BHO efforts as to those plan areas.

This approach also creates an inconsistency with Objectives 1-3, 1-5 and 1-6 of the Land Use Element and the policies corresponding to the respective Objectives. These objectives all relate to the reduction of intensity and density of residential development in hillside areas. What

the BHO does, however, is create incentive for hillside subdivision of larger lots. If a developer or landowner is denied the opportunity to infill on a large lot with a large home, he or she will take the opportunity to maximize economic utility of the property by subdividing and building several smaller homes on smaller lots, to the extent possible. However, these significant land use impacts have been completely omitted from disclosure, analysis and mitigation in the current documents before you.

These inconsistencies also prevent the City from making the findings of consistency that are required under Section 556 of the Los Angeles City Charter. It also creates a potentially significant impact that precludes adoption of the BHO through use of a Negative Declaration.

A strong presumption in favor of requiring preparation of an Environmental Impact Report is built into the California Environmental Quality Act ("CEQA"). This presumption is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal. (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.

Under CEQA and the CEQA Guidelines, if a project may cause a significant effect on the environment then the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. No Oil, Inc. v. City of Los Angeles, *supra*, 13 Cal.3d at 83, n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

The fair argument test is a "low threshold" test for requiring the preparation of an EIR. No Oil, *supra*, 13 Cal.3d at 84. This standard reflects a preference for requiring an EIR to be prepared, and a preference for resolving doubts in favor of environmental review. Mejia v. City of Los Angeles (2005) 130 Cal.App.4th 322, 332.

The CEQA Guidelines at 14 Cal. Code Regs. § 15384(a) define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached . . ." Under Pub. Res. Code Sections 21080(e), 21082.2(c), and CEQA Guidelines Sections 15064(f)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

Agency "thresholds of significance" are not necessarily the threshold that may be used in determining the existence of a "significant" impact. A significant impact may occur even if the particular impact does not trigger or exceed an agency's arbitrarily set threshold of significance.

Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 114.

An agency must prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact. If there is substantial evidence both for and against preparing an EIR, then the agency must prepare the EIR.

The EIR has been aptly described as the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government. [T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.

Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 355-356 (italics in original).

One of the thresholds of significance in the City's Initial Study checklist is whether the project will "conflict with applicable land use plan, policy or regulation of an agency with jurisdiction over the project (included but not limited to the general plan, specific plan, coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect." The BHO conflicts with the General Plan Land Use Element, thus exceeding the threshold and requiring the preparation of an EIR.

One of the CEQA comment letters in the Council file also noted that there is a fair argument of a potentially significant impact to public services and recreation. By limiting development on all hillside properties in the City of private recreational facilities, such as pools and play areas, the BHO will lead to a greater burden on nearby public recreation resources. (Council File, Exhibit B, p. 45.) The Department of City Planning's response, however, did not address this claim.

What the Department said was simply that the number of new residents would not increase and there would therefore be no increased demand for public recreational facilities. That is a complete non sequitur. The response went on to say that private recreational resources have no bearing on the analysis of impacts to public recreational resources. Both elements of the response miss the point of the comment. The comment correctly notes that restrictions on a person's ability to develop private recreational resources as part of single-family home

development, as the BHO does, will create potentially significant corresponding burdens on nearby public resources. In this regard, development of private recreation resources has a direct bearing on the analysis of impacts to public recreational resources.

The Department may point to provisions of the BHO and Los Angeles Municipal Code allowing for variances from the BHO as a means of addressing these potentially significant impacts. In practice, though, this will not occur. The findings necessary to grant a variance establish an exceedingly high bar, as they should, and have nothing to do with the desired purpose of the BHO to limit development in hillside areas in a manner out of character with existing neighborhoods. Since the Department has looked to Beverly Hills for examples of hillside development criteria and processes, Beverly Hills' approach to permitting very large homes may provide an acceptable alternative to the BHO as written.

On its face, the Beverly Hills hillside regulations allow a 15,000-square-foot home by-right on a one-acre lot. (Revised Recommendation Report, pp. 27-28.) This is roughly similar to what would be allowed on a similarly-sized lot in the RE40 zone with a slope of less than 15%. Beverly Hills, though, provides a discretionary permitting process for a Hillside Permit for homes in excess of 15,000 square feet. Applying this type of approach here would, for example, allow the Zoning Administrator to grant exceptions for homes that exceed BHO standards if findings are made based on the character of the surrounding neighborhood, rather than hardship related findings required for a variance.

The staff report states that “[t]he current FAR of 3:1 for single-family residential zones is extremely permissive and has resulted in the construction of large structures that are incompatible with the existing surrounding neighborhoods.” That statement is sometimes true, and sometimes not true – depending on the particular neighborhood in question, i.e., the “one size fits all” problem. In addressing existing problems, the BHO creates new ones, as discussed above. As a result, we urge the City to reject the proposed BHO and its Negative Declaration in its current form and revise it to meet the legal and factual deficiencies stated herein, including the preparation of an EIR. Please send this firm notice of any and all actions taken in this matter.

Very truly yours,

*Robert P. Silverstein / RP*

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM

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