

Department of Public Works, Bureau of Engineering

STAFF REPORT

SUBJECT: Staff Report to the Appeal of Board of Public Works California Environmental Quality Act (CEQA) Finding for the Class “B” Permit for Voluntary Non-Standard Improvements on Bulwer Drive

RECOMMENDED ACTION:

For the reasons stated herein as to all points raised in the appeal, and in light of the whole record of the project proceedings, the Staff of the Department of Public Works, Bureau of Engineering (BOE) recommends that the City Council:

1. DENY the appeal filed by the Santa Monica Mountains Conservancy relative to the finding by the Board of Public Works (Board) that the Class “B” Permit for Voluntary Non-Standard Improvements on Bulwer Drive is categorically exempt under the California Environmental Quality Act (CEQA).
2. ADOPT the September 15, 2014, action of the Board of Public Works of the City of Los Angeles in which the Board found that the project is categorically exempt under the California Environmental Quality Act after considering the notice of exemption on file in the Board Office, see Transmittal No. 5 of Board Report, revision date August 20, 2014 (Attachment No. 1).
3. DIRECT staff of the BOE to file a notice of exemption with the Los Angeles City Clerk and the Los Angeles County Clerk.

RESPONSE TO THE APPEAL:

The Appeal, dated December 15, 2014, was submitted by Paul Edelman, Natural Resources Planning Deputy Director of the Santa Monica Mountains Conservancy (Appellant). The Appeal is attached (Attachment No. 2) and the claims of the Appellant are identified sequentially in the right hand margin by the letter “A” followed by a number; the claims are numbered from A1 through A10. Following are responses to each of the claims:

- A1.** Appellant is appealing any certification of the notice of exemption dated March 12, 2014 by the Board of Board of Public Works (Board) for the Class “B” Permit for Voluntary Non-Standard Improvements on Bulwer Drive. The appeal is to the City Council per Section 21151(c) of the California Environmental Quality Act (CEQA).

The appeal to the City Council raises the issue whether or not the CEQA finding by the Board was proper based on the requirements of CEQA. The *approval of the project* by the Board is not subject to appeal to the City Council under the City’s codes. However, under state law, CEQA requires such environmental determinations to be appealable to the City’s elected decisionmaking body, City Council. In response to the appeal, Staff recommends that the City Council find that the finding by the Board that the project is exempt under CEQA was proper, deny the appeal, and adopt the finding of the Board. Alternatively, should the City Council find that the finding by the Board that the project is exempt under CEQA was deficient and grant the appeal, the City Council would send the matter back to the Board with instructions.

- A2.** Appellant urges the City Council to deny approval of the project and notice of exemption until the CEQA documentation is revised to adequately disclose the project’s significant adverse impacts and until all feasible alternatives and mitigation measures have been adopted as required by CEQA.

Staff's recommended actions for the City Council are provided in A1 above. The adequacy of the notice of exemption is discussed below.

- A3.** Appellant claims the project is not categorically exempt from CEQA because it does not adequately disclose, analyze, and mitigate potential biological, visual, growth-inducing and cumulative impacts.

A project may have various levels of impact on the environment when proposed. Some projects are by definition exempt from study or review. Those projects are classified as categorically exempt. The proposed voluntary improvements for this B-permit do not trigger the requirements for environmental documentation beyond a categorical exemption (and any supporting evidence in the record, such as the notice of exemption and categorical exemption narrative, collectively the "NOE"). As indicated in the NOE prepared by the BOE, the project is exempt from the provisions of CEQA pursuant to City CEQA Guidelines Article III, Section 1, Class 1 (existing facilities), Class 3 (new construction of small structures), or Class 4 (minor alterations to land), depending on the specific element of the project. None of the potential exceptions to use of a categorical exemption set forth in State CEQA Guidelines Section 15300.2 is applicable. The NOE considered potential exceptions to the use of a categorical exemption. Under "cumulative impacts" the NOE indicated that the easement(s) would allow the proposed temporary improvements to extend to the full width of the existing path of travel. In no case would this width meet or exceed 20 feet. As such, the roadway would continue to be below the minimum required to meet the Hillside Ordinance requirements (Los Angeles Municipal Code (LAMC) 12.21 A.17 (e)), and therefore additional discretionary entitlements are required for any other projects. Therefore, the project will not enable new development along Bulwer Drive. Additionally, under "Significant Effect" the NOE stated that "[a]lthough several plant and animal species of concern occur in the Santa Monica Mountains, all of the proposed work will occur in areas that are either in use as travelled roadway or are recently graded slopes. There is negligible risk of significantly affecting a plant or animal species of concern."

- A4.** Appellant claims that as noted in the subject categorical exemption narrative, in 2006, the Planning Department determined that a proposal to develop 8033-8037 Bulwer Drive (City Planning Case DIR 2005-8437-DRB-SPP) was not entitled to categorical exemption status under CEQA, based in part on the construction of 800 linear feet of fully-improved roadway within the City right-of-way (Bulwer Drive) in conjunction with the proposed single-family dwelling project. The Appellant further states that the Planning Department reasoned that, "full development of this portion of Bulwer Drive is likely to result in the development of at least ten additional vacant lots which will be service by this roadway. The environmental effects of the road construction could therefore be cumulative and potentially growth-inducing."

As indicated on page 6 of the categorical exemption narrative, the 2006 determination by the Department of City Planning does not apply to the currently proposed project. The City's Hillside Ordinance requires a 20-ft wide continuous paved roadway from the driveway apron of a proposed building to the boundary of the hillside area (or the zoning administrator's discretionary approval) prior to the issuance of a building permit. The proposed roadway is less than 20 ft. The current proposal for non-standard improvements to Bulwer Drive will not satisfy the requirements for development of the vacant lots that the drive serves; therefore the proposed project will not in itself allow any further development.

- A5.** Appellant claims that the NOE erroneously concludes that this 2006 determination by the Planning Department does not apply to the current proposal for non-standard improvements because those improvements would not satisfy the requirements for development of the vacant lots that the Drive serves, and that therefore the proposed project will not in itself allow any further development. The Appellant claims this conclusion is far reaching and mostly false

because the City approval of single family homes on substandard roads without full compliance with the Hillside Ordinance's requirements is a common outcome. The Appellant claims that it is reasonably foreseeable that the proposed improvements would result in the development of existing vacant parcels along Bulwer Drive, as the primary obstacle to development – improving the road – would be removed.

The Hillside Ordinance, LAMC Section 12.21 A.17 (e) (3), requires a 20-foot wide continuous paved roadway from the driveway apron to the boundary of the hillside area prior to the issuance of any new building permit. As indicated in the NOE, the current proposal for non-standard improvements to Bulwer Drive will not satisfy the requirements for development of the vacant lots that the drive serves and subsequent discretionary review would be triggered for subsequent development of vacant lots that the drive serves. There is no evidence to support the claim that approval of single family homes on substandard roads without full compliance with the Hillside Ordinance is a "common outcome." There is also no evidence to support the claim that the proposed project would result in the development of existing vacant parcels.

- A6.** Appellant claims the City's CEQA analysis has not looked at an adequate range of alternatives to address the applicants' issues without resulting in significant environmental impacts.

A project may have various levels of impact on the environment when proposed. Some projects are by definition exempt from study or review. Those projects are classified as categorically exempt. An alternatives analysis is only required if an environmental impact report is necessary. The proposed voluntary improvements for this B-permit do not trigger the requirements for environmental documentation beyond an NOE. Should a project be proposed that would construct a standard hillside street width of 20 feet and/or additional home(s), an assessment regarding the necessary environmental clearance(s) would have to be made for that alternative scope of work.

- A7.** Appellant claims that the NOE does not address how the subject portion of unpaved, City-owned Bulwer Drive is a critical element of the wildlife habitat linkage system between Laurel Canyon Boulevard and the Nichols Canyon watershed and that the impacts of the proposed project on this resource have not been disclosed or analyzed. The Appellant also claims that the potential impacts of grading within the drip lines of protected coast live oak trees adjacent to the proposed improvements have also not been disclosed or analyzed.

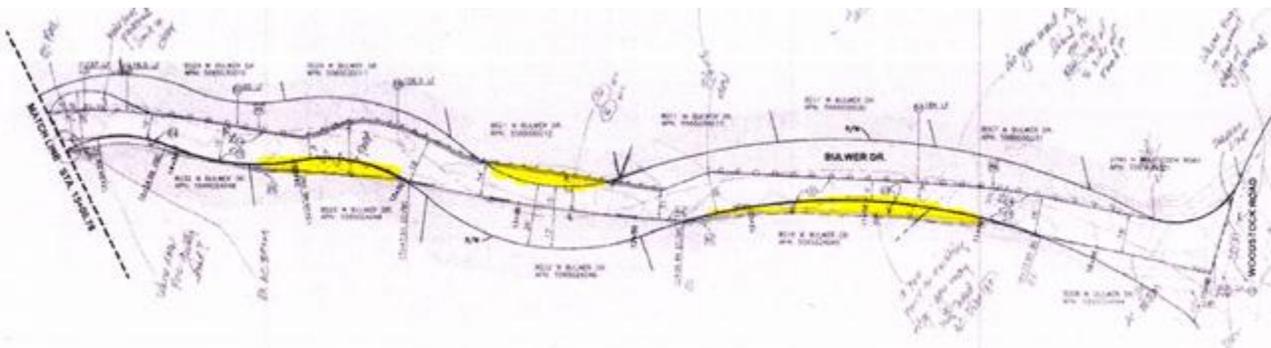
Analysis conducted for the NOE considered potential impacts to biological resources. Page 7 of the categorical exemption narrative indicates that although several plant and animal species of concern occur in the Santa Monica Mountains, all of the proposed work will occur in areas that are either in use as travelled roadway or are recently graded slopes. There is negligible risk of significantly affecting a plant or animal species of concern.

- A8.** Appellant claims that "[a]s part of the proposed project, two landowners must give the City permission to grade and pave their properties to benefit the applicant, a private party. If the landowners do not provide consent, the City probably must condemn easements. The NOE is potentially deficient for not addressing the implications of those two landowners not providing such consent."

As set forth in Page 8 of the Board of Public Works Report, the existing dirt road follows the historical path of travel and meanders within the right-of-way alignment. As a result there are areas which cross private property and are shaded in yellow below. The BOE is requiring that the proposed voluntary non-standard improvement use these shaded areas to construct the road to match the existing path of travel. This requirement means constructing the road up to the existing retaining bulkheads and to the edge of the existing path of travel. The retaining

bulkheads were installed by the City and continue to be maintained by the City, even though they are located on private property. Constructing the roadway from the bulkheads to the edge of the path of travel is necessary for drainage control.

The project includes the roadway easement(s) highlighted in the plan view below, which would bring the right-of-way into alignment with the existing historical path of travel.



An easement would grant access to the bulkheads maintained by the City and preserve the road in its current configuration. Easements for slopes, retaining walls, and the roadway allow the City right-of-entry for the purposes of maintenance and construction. The roadway easement also grants right-of-passage for the public.

Even with the easement(s), the proposed temporary improvements would not meet or exceed 20 feet in width. As such, the roadway would continue to be below the minimum required standard to meet the Hillside Ordinance requirements of LAMC Section 12.21 A.17 (e).

- A9.** Appellant claims the NOE “does not adequately describe the need, location and details for the proposed drainage improvements included in the project description on four private properties owned by the applicant. Those drainage improvements could be growth-inducing and result in visual impacts from both Mulholland Drive and City-owned parkland at the southwest corner of Mulholland Drive and Laurel Canyon Boulevard. Currently there is a wide open earthen chute that steeply descends from the applicant’s two existing houses on Bulwer Drive straight to Laurel Canyon Boulevard where it terminates at a standpipe protected by temporary k-rails along the street. The deficiencies of this drainage element relative to the remainder of the proposed project must be evaluated as part of the proposed project. ”

The NOE indicates the applicant will also be required to provide an area drain system or drainage system improvements to manage run-off in the roadway, and drainage and erosion control on the restored slope are of TR 4696 Lots 58, 59, 60, and 61.

As indicated in the Board Report, the BOE recommends that a drainage system be constructed to provide relief to any area impoundments and convey the water to the existing storm drain system. In the event that slough and debris from slope failures above the roadway block water flow on the roadway surface to the storm drain system, an alternate path of travel for the water is provided. Small pipes and basins will provide a means to collect water from any impoundments and convey it to the existing system.

The BOE also recommends that the final two-inch Asphalt Concrete pavement wearing surface in front of 8037-8045 Bulwer Drive be installed. The final paving will allow any water to flow along the concrete gutters and direct its flow to the existing catch basins.

The geology and soils reports submitted by the applicant’s engineer referenced a slope repair due to storm damage on Lots 58, 59, 60, and 61 adjacent to Bulwer Drive. The soils report

clearly indicates that no surface drainage control or erosion protection devices for this slope have been provided. In the event the slope fails, it could potentially undermine the upslope right-of-way. As such, the BOE believes that protection of this slope is necessary to protect the Bulwer Drive right-of-way as well as Laurel Canyon Boulevard. Bulwer Drive, LLC, shall install surface drainage control and erosion control as referenced in the "Rough Grade Compaction Report for Remedial Repair of Storm Damaged Slopes" by Cal West Geotechnical Consulting Engineers, January 10, 2011, following additional recommendations from Cal West Geotechnical Engineers, under permit from the City of Los Angeles Department of Building and Safety (LADBS), to the satisfaction of the City Engineer.

The drainage improvements are part of the project and as indicated above, the project will not satisfy the requirements for development of the vacant lots that the drive serves; therefore the proposed project will not in itself allow any further development or be growth-inducing.

- A10.** Appellant claims that "[i]f the pavement averages approximately 12 feet in width, not accounting for excavation expansion, 700 cubic yards of material would have to be trucked out of the neighborhood. To fill the area, 700 cubic yards of fill and 200 cubic yards of paving material would have to be trucked in. The NOE does not address the potential impacts of these truck trips on the neighborhood or on the stability of the subject portion of Bulwer Drive. The NOE is further deficient for not addressing the long term compatibility of the proposed improvements with the existing road bulwarks on both public and private land."

Considerable attention was placed on the stability of the existing features during the BOE review of the project. The stability of the slope and therefore roadway are documented in the soils reports and updates submitted for the project. The improvements are to be constructed in such a way that they protect the existing retaining walls from erosion and the buildup of hydrostatic pressures which could lead to a critical failure. The proposed improvements therefore work to enhance the performance of the existing bulkheads.

As for the volume of natural fill to be removed and replaced with classified fill, this practice is no different than that which was used to re-mediate the slope failure on the private lots below the roadway. Furthermore, the volume of material is below the threshold which requires a haul route permit. This level does not therefore trigger a level of CEQA review beyond that of the NOE. As noted above, the project was exempt under several classes, including Class 4 (minor alterations to land) which consists of minor public or private alterations to the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes.

RESPONSE TO THE APPLICANT'S LETTER:

The City also received a letter dated February 17, 2015, from Jeffer Mangels Butler & Mitchell LLP, which represents the project applicant, Bulwer Drive LLC. The letter is attached (Attachment No. 3).

- B1.** The letter states that the CEQA appeal filed by the Santa Monica Mountains Conservancy on December 15, 2014, is not available because the appeal was filed more than 35 days after the filing of the NOE of the Board's action on September 18, 2014.

The September 18, 2014, NOE became inoperative after the City Council asserted jurisdiction of the Board's action under City Charter section 245 on September 23, 2014. The City Council subsequently rescinded its September 23, 2014, action, but the NOE remained inoperative. The City Council may properly consider the current CEQA appeal.