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Emily Gabel-Luddy
Deputy Advisory Agency
Los Angeles City Planning Department
200 North Spring Street
Los Angeles, California 90012

Robert Z. Dueñas
Hearing Officer
Los Angeles City Planning Department
Room 351
6262 Van Nuys Boulevard
Van Nuys, California 91401

Re: *Proper Calculation of Slope Density Ordinance*
Case No CPC 2004-4344
CPC 2004-4345
Vesting Tentative Tract No 61672
7000-8000 La Tuna Canyon Road
California Whitebird Inc (O)(A)

Dear Ms. Gabel-Luddy and Mr. Dueñas,

After examining the slope density analysis set forth on the slope density map prepared by Canyon Hills Whitebird ("Whitebird") and its engineers, it is evident that the slope density calculations are flawed. Whitebird contends that the minimum number of units allowed under the Slope Density Ordinance equals 175 dwelling units. However, the actual calculations allowed by the Los Angeles Municipal Code (LAMC) only permit 71 units. In fact, only 65 units are permissible if grids 209 and 210 are removed from the calculation since they are not actually part of the project.

The engineers employed by Whitebird have either mistakenly made multiple errors in their calculations OR HAVE DELIBERATELY MANIPULATED THE SLOPE DENSITY ORDINANCE TO ARTIFICIALLY INCREASE THE NUMBER OF ALLOWABLE UNITS. Their slope density map was "certified" on 12/6/04, a mere three days before the initial public hearing. Prior to this, alternative D of the final EIR stated that the slope density calculations allowed 87 dwelling units. (That number is now suspect.) This last minute map appears to be a ploy to justify the unjustifiable.

1. Reasons for Review. There are numerous reasons why the City of Los Angeles must make findings and conclusions based on the proper slope density calculations. They include but are not limited to the following:

- 1.1. Allowing a corporation to violate the LAMC significantly increases the legal liability of the City. This is especially true now that the City has been formally notified of these violations. For example, should the City permit Whitebird to exceed the number of units allowed by the Slope Density Ordinance, the City will have absolute civil liability. Building on hillsides creates many public safety issues including fire protection, ingress and egress issues and excessive cut and fill grading which leads to landslides and mudslides. It is for this reason that the Slope Density Ordinance was passed to limit hillside development. Allowing slope density miscalculations is to ignore the public safety.
- 1.2. When it becomes publicly known that the City and its representatives have allowed a private developer to manipulate and/or outright ignore the Slope Density Ordinance in order to increase corporate profits at the expense of homeowner safety and hillside preservation, the inevitable investigations will follow. This is a city-wide issue which affects all of the Hollywood Hills, the Santa Susana Mountains, Baldwin Hills, Sylmar and the Santa Monica Mountains.
- 1.3. When the proper slope density calculations are used, the City cannot make the findings to change the community plan to allow anywhere from 175 to 230 dwelling units.

Therefore, I would urge the City to carefully review the following discussion about the proper application of the Slope Density Ordinance.

2. Slope Density Ordinance. The following is a brief description of the Slope Density Ordinance. While somewhat dry in content, a complete understanding of the Slope Density Ordinance is necessary in order to fully comprehend how Whitebird improperly calculated the number of units.

The Slope Density Ordinance was passed in 1987 as Ordinance 162,144. A copy of such ordinance is attached hereto and marked Exhibit 1. The ordinance consisted of three substantive parts (the fourth part dealt with the effective date).

- 2.1. Part 1 added Section 17.02 to the Los Angeles Municipal Code. Section 17.02 provided the following:
 - 2.1.1. The definition of the "Average Natural Slope";
 - 2.1.2. The method for calculating the Average Natural Slope;

$$\text{Slope} = \frac{\text{Contour length} \times \text{Contour interval}}{\text{Square Feet}}$$

2.1.3. That "slopes may be computed by the entire parcel area or by 500 foot grid increments as shown on the City Engineers topographic map."

2.2. Part 2 added a subsection C to Section 17.05 of the Los Angeles Municipal Code. Section 17.05 deals with tentative tract maps. The added provision states that in hillside areas with minimum density:

"The dwelling unit density shall not exceed that allowed by the following formula:

$$D = \frac{50 - S}{35}$$

Where: D = the maximum number of dwelling units per gross acre allowable, and
S = the average natural slope of the land in percent."

The dwelling unit density is then multiplied by the number of acres to determine the total number of dwelling units permitted for the entire project. Section 17.05 goes on to provide for rounding either up or down to the nearest whole number of dwelling units. There are two significant points about section 17.05:

2.2.1. The first is that density is calculated by reference to the entire tentative tract map area - in other words, by units per gross acre.

2.2.2. Equally important, Section 17.05 does not address the limitations of Section 17.50. Please see the following paragraph for a description of Section 17.50.

2.3. Part 3 of the 1987 ordinance adds section 17.50 E which deals with slope density calculations in the parcel map context. Section 17.05 and 17.50 are identical with the exception that Section 17.50 dealing with parcel maps has a provision which states "In no case shall the permitted density be less than 0.05 dwelling units per gross acre." This provision does not exist in the ordinance which enacted Section 17.05 dealing with subdivisions. The old code book published by BNI Business News Inc., which is attached hereto and marked Exhibit 2, correctly does not include that language in Section 17.05. However, the current website version of Section 17.05 contains that language **even though it is not a part of the ordinance.** (See exhibit 1.)

3. Problems with USGS Map Used to Calculate Slope Density. There are numerous problems with the developer's slope density map from which calculations were made including but not limited to the following:

- 3.1. The USGS map used by Whitebird was not prepared by the City Engineer, a civil engineer or a land surveyor as required by 17.02.
- 3.2. The USGS map is on 40 foot contours which Whitebird interpolated to 25 foot contours. This leads to a "false accuracy." See Exhibit 3.
- 3.3. Section 17.02 permits the use of 500 foot grids to calculate slope based on the City Engineer topographic maps. Numerous grids used by Whitebird exceed the 500 foot grid limitation set forth by Section 17.02. See Exhibit 4.
- 3.4. Section 17.02 only allows the use of 500 foot grids to calculate slope as indicated on the "City Engineer topographic maps" which means that only City Engineering maps, not interpolated USGS maps, can use the 500 foot grid method to calculate slope.
- 3.5. The developer's slope density map includes grids 209 and 210 which are not part of the project area. Compare the developer's Slope Density Map with Exhibit E-2 of the Mr. Dueñas report (See Exhibit 5). These additional grids inappropriately add 5.9 dwelling units regardless of the method of calculation.
- 3.6. The developer's slope density map calculates that there are 903.3 acres in the project. However every description of the project lists the acreage at 887 acres. Grids 209 and 210 are not part of the project as described in the EIR and account for a total of 9.9 acres. This still leaves 6 unaccounted acres. For purposes of this letter the 903.3 acres refers to the calculations on the developers slope density map even though that number does not correspond to the project description in the EIR. The 903.3 acres shall hereafter be referred to in quotes to note the inconsistency ("903.3").
- 3.7. Even if the City allowed the use of a USGS map, the map used by Whitebird was created prior to the construction of the 210 freeway and does not include the cut and fill slopes which were needed to construct the 210 freeway and which have existed for approximately 30 years.

4. Proper Method of Slope Density Calculation. Attached hereto and marked Exhibit 6 is a copy of Whitebird's slope density map and its density calculation chart.

Attached hereto and marked Exhibit 7 is a chart which replicates the developer's chart but adds, as the final two columns, the proper calculations under LAMC 17.05 for Density (Dwelling Units per acre - Du/Ac) and the proper number of Dwelling Units when the Du/Ac is multiplied by the number of acres. Despite the problems with the map as described in paragraph 3, for purposes of analysis and comparison one shall accept as true the contour length for each grid (Column 2), the contour interval (Column 3), the area in square feet (Column 4), the area in acres (Column 5) and the average slope (Column 6).

Since the slope calculations are not at issue for purpose of this section, the only issue is the proper calculation of density. The formula for calculating density as set forth in LAMC 17.05 is:

$$D = \frac{50 - (\text{Slope in percentage} \times 100)}{35} \times \text{Acres}$$

For example, if the slope is 45% and the number of acres equals 5.7 then the developer would be entitled to 0.8 dwelling units (See grid 68).

$$D = \frac{50 - 45}{35} \times 5.7 \text{ acres} = 0.8 \text{ units}$$

On the other hand if the slope were 55% and the number of acres remained at 5.7 then the developer would be entitled to a negative 0.8 dwelling units (See grid 99).

$$D = \frac{50 - 55}{35} \times 5.7 \text{ acres} = -0.8 \text{ units}$$

As illustrated in column 7 of Exhibit 7, when all of the positive number of dwelling units, which represent the less steep property, and negative number of dwelling units, which represent the steeper terrain, are added together, the total number of units allowed can be determined. When all of the 210 grids in the developer's slope density map are added, the number of allowable units under the LAMC equals 71 (70.8 rounded up). See the last column of Exhibit 7.

5. The Correct Alternative Methods of Calculating Density Yield Substantially Identical Results. There are two acceptable ways to calculate density both of which reach substantially similar results:

- 5.1. The first method is as described in section 3, which uses the slopes on a per grid basis to arrive at the number of dwelling units per acre and then multiplies by the number of acres to come up with either a positive or negative number after which the positive and negative numbers are added together. In the present case using the developer's slope density map the allowable number of units is 71. See the last two columns of Exhibit 7. (65 units if grids 209 and 210

are excluded as not being part of the project.)

- 5.2. The alternative acceptable method is to calculate the slope of the project as a whole and then apply the density formula. Using the figures in the developer's slope density map, the average natural slope as calculated pursuant to the formula of Section 17.02 equals 47.2%.

$$\text{Slope (47.2\%)} = \frac{\text{Total Contour Length (743,314)} \times \text{Contour Interval (25)}}{\text{Area in Sq. Ft. (39,356,163)}}$$

Once the overall slope is calculated the density formula as described in section 17.05 can be applied and the total allowed density for all "903.3" acres equals 72 units.

$$\text{Density (72.3 units)} = \frac{50 - 47.2 (\text{slope in percent times } 100)}{35} \times \text{"903.3" (gross acres)}$$

Calculating density by the grid method results in 71 units while calculating density based on the overall slope of the site allows for 72 units. The calculations are statistically identical and yield consistent results.

Even if the language requiring a minimum of 0.05 units per gross acre (i.e. 1 house per 20 acres) were included in section 17.05 (which it is not) then the current project would have more than the minimum number of dwelling units allowed since 0.05 houses per gross acre times "903.3" acres equals 45 houses. Only if the actual slope density calculations had yielded less than 45 dwelling units would that "minimum" calculation be relevant.

6. The Developer's Miscalculations. The question then becomes how can the developer, using the same slope and acreage, conclude that it can build a minimum of 175 units on the same "903.3" acres where only 71 are allowed under the LAMC. The means by which Whitebird arrived at its figure of 175 units was to state that Section 17.05 contained the language found in Section 17.50 which provides that "In no case shall the permitted density be less than 0.05 dwelling units per gross acres." Whitebird then misinterpreted such language.

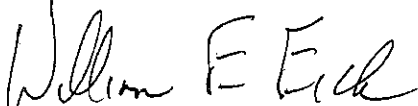
Since half of the slopes are so severe that they exceed 50%, Whitebird contends that the minimum number of dwelling units for each acre per grid is 0.05 as opposed to the correct determination that the 0.05 minimum is applicable to the overall number of gross acres. For example, in grid 99 of Exhibit 7 where the slope is 55%, Whitebird contends that it is entitled to density of at least 0.05 units for each acre per grid or 0.3 units for 5.7 acres. As demonstrated in columns 9 and 10 of Exhibit 7, for grid 99 the allowable dwelling units per acre (Du/Ac) equals a negative 0.14 Du/Ac which when multiplied by the 5.7 acres yields a negative 0.8 units for the same 5.7 acres. By misapplying the above quoted language Whitebird contends that it is entitled to units where none should be allowed. Density is calculated on the overall gross acreage not artificially limited on a per grid basis. The proper method is to take all of the positive numbers and the negative numbers to reach

a total density. Only when the total number of allowable units is less than 0.05 dwelling units per gross acre can the "minimum" calculation language be applied.

7. Obvious Inconsistency in Method Used By Whitebird. The correct alternative methods to calculate slope density allow either 71 or 72 units over the "903.3" acres. Whitebird's contention that it is entitled to 175 units under slope density yields a number which is 246% greater than the number actually allowed by the LAMC. Whitebird adds nonexistent language to LAMC 17.05 and then misinterprets its meaning.

8. Conclusion. For all of the reasons set forth in this letter the City of Los Angeles is respectfully requested to review the slope density calculations for this project and then make the appropriate changes to the Deputy Advisory Agency decisions and the Planning Department's recommendation to the Planning Commission regarding zone change and general plan amendments.

Very truly yours,



William E. Eick,
Attorney at Law

WEE/mr

cc: Honorable Wendy Gruel
Jan Chatten-Brown, Esq.
Santa Monica Mountains Conservancy
FALCON
Bart Paul
Sunland Tujunga Neighborhood Council
Sierra Club