

J. MICHAEL CAREY
City Clerk

When making inquiries
relative to this matter
refer to File No.

CITY OF LOS ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR

Office of the
CITY CLERK
Council and Public Services
Room 615, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
General Information - (213) 485-5705

98-1384

CDs 2,4,5,11

October 8, 1998

PLACE IN FILES

OCT 16 1998

PC 98-0170 (DEB)(A)
RETD. PLAN COMM.

Council Member Wachs
Council Member Ferraro
Council Member Feuer
Council Member Miscikowski
Planning Commission
Director of Planning
Advisory Agency

Planning Department,
Community Planning Section
Bureau of Engineering,
Development Services Division
Attn: Glenn Hirano
Department of Building & Safety
c/o Zoning Coordinator

Mulholland Tomorrow
c/o Barry Read
210 Carriage Place
Manhattan Beach, 90266

Corin L. Kahn
Attorney at Law
15060 Ventura Bl., Ste. 490
Sherman Oaks, CA 91403

RE: APPEAL FROM DIRECTOR OF PLANNING'S INTERPRETATION FOR SECTION 3.D OF
THE MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN

At the meeting of the Council held October 7, 1998, the following
action was taken:

Attached report adopted.....	_____X_____
Attached motion () adopted.....	_____
Attached resolution adopted.....	_____
Ordinance adopted.....	_____
Motion adopted to approve attached report.....	_____
Motion adopted to approve attached communication.....	_____
To the Mayor for concurrence.....	_____
To the Mayor FORTHWITH.....	_____
Findings adopted.....	_____
Negative Declaration adopted.....	_____

J. Michael Carey
City Clerk
bs



#13

PLANNING AND LAND USE MANAGEMENT COMMITTEE
Report/Communication for Signature

Council File Number 98-1384

Committee Meeting Date 9-15-98

Council Date 10-7-98

COMMITTEE MEMBERS	YES	NO	ABSENT
COUNCILMEMBER BERNSON, Chair			✓
COUNCILMEMBER MISCIKOWSKI	✓		
COUNCILMEMBER HERNANDEZ	✓		

Remarks Interpretation of Mulholland Scenic Parkway
Specific Plan.

Konrad Carter, Legislative Assistant ♦♦♦♦ Telephone 485-5707

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your PLANNING AND LAND USE MANAGEMENT Committee
reports as follows:

Public Comments Yes No
XX —

PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT relative to
appeal from Director of Planning's Interpretation for Section 3.D
of the Mulholland Scenic Parkway Specific Plan (MSPSP).

Recommendation for Council action:

DENY APPEALS IN PART filed by Corin L. Kahn and Mulholland
Tomorrow from the Director of Planning's Interpretation for
Section 3.D of the MSPSP and, APPROVE CLARIFICATION of Council's
intent for Section 3.D. to read as follows (footnotes contained
in summary section):

Section 3.D of the MSPSP is hereby interpreted to exempt
only those aspects of any project for which an application
was filed, subjected to a public hearing with legally
adequate notice, and for which the project received one of
the listed discretionary approvals, and such discretionary
approval had explicit findings and conditions of approval
which reflect the Scenic Corridor Section of the Mulholland
Scenic Parkway Report and which were then imposed by either
the Citizen Advisory Committee, City Planning Commission,
Deputy Advisory Agency, Planning Director or the City
Council. In the event the rules governing the project have
changed, whether voluntarily, such as an application for a
new permit or a changed project, or in the event of an
involuntary change, such as a city-initiated change in zone
which would change development requirements, the provisions
of this exemption shall not apply.

CPC 98-0170 DRB-A

Fiscal Impact Statements: The Planning Department advises that
there is no General Fund impact, as administrative costs are
recovered through fees.

Summary:

The Mulholland Scenic Parkway Specific Plan (MSPSP) was adopted
on June 29, 1992. Recently a number of questions have been
raised regarding Section 3.D for projects that are exempt from
the provisions of the MSPSP, including a request to clarify the
language in the provisions of Section 3.D. On May 7, 1998, the
Director of Planning issued a written interpretation to clarify
for the general public the meaning of Section 3.D. Said
interpretation was based upon the review of the public record
including the original City Council findings. The review of

Planning and Land Use
Management Committee Report
CF 98-1384

these findings indicated that the intent of Section 3.D in the Specific Plan was to avoid duplicate reviews for the same project, whether it was the Citizen Advisory Committee or the Advisory Agency that had reviewed the project. The Council's findings indicated that there should be no separate review by the Mulholland Scenic Parkway Design Review Board if the original decision-making body had considered the spirit and intent of the Mulholland Scenic Parkway Report in its discretionary approval.

On September 15, 1998, the Planning and Land Use Management Committee conducted a public hearing on appeals filed by Corin L. Kahn and Mulholland Tomorrow from the Director of Planning's Interpretation for Section 3.D of the MSPSP, stating that the interpretation is erroneous and contradictory to law.

At this meeting, Planning Department staff submitted further clarification language regarding the 3.D Exemption Interpretation to the Committee. The appellants expressed agreement with the clarification.

As such, the Committee moved to approve the clarification language for Section 3.D as follows:

Section 3.D of the MSPSP is hereby interpreted to exempt only those aspects¹ of any project for which an application was filed, subjected to a public hearing with legally adequate notice, and for which the project received one of the listed discretionary approvals, and such discretionary approval had explicit findings and conditions of approval which reflect the Scenic Corridor Section of the Mulholland Scenic Parkway Report² and which were then imposed by either the Citizen Advisory Committee, City Planning Commission, Deputy Advisory Agency, Planning Director or the City Council. In the event the rules governing the project have changed, whether voluntarily, such as an application for a

¹ Only those aspects of projects which were demonstrably evaluated for the project's compliance with LAMC Division of Land Section 17.05S, if applicable, and the spirit and intent of the proposed draft Mulholland Scenic Parkway Specific Plan would be considered to be exempt from the provisions of the Specific Plan and review by the Design Review Board. Issues raised pursuant to the applicable version of the Specific Plan, not already adequately considered pursuant to this interpretation, specifically would not be exempt.

² See page 17 of the Mulholland Scenic Parkway Report.

Planning and Land Use
Management Committee Report
CF 98-1384

new permit or a changed project, or in the event of an involuntary change, such as a city-initiated change in zone which would change development requirements, the provisions of this exemption shall not apply.³

Respectfully submitted,

PLANNING AND LAND USE MANAGEMENT COMMITTEE

Cindy Misulander
[Signature]

KC
9-23-98
Enc: CPC 98-0170 DRB-A
CDS 2,4,5,11

#981384

³ To find otherwise would be inconsistent with all other policies which govern planning decisions in the City. It was never the intent of Council as part of its AB283 downzoning to allow greater development rights than was allowed before the downzoning including and exemption from the Specific Plan.

REPT.
ADOPTED
OCT 07 1998
LOS ANGELES CITY COUNCIL

07-Oct-98 10:35:59 AM #7

Items for Which Public Hearings Have Been Held - Items 6-15

Voting on Item(s): 6,8-11,13-15

Roll Call

ALARCON	Yes
ALATORRE	Absent
BERNSEN	Yes
CHICK	Absent
FEUER	Yes
GALANTER	Yes
GOLDBERG	Yes
HERNANDEZ	Yes
HOLDEN	Yes
MISCIKOWSKI	Yes
RIDLEY-THOMAS	Yes
SVORINICH	Yes
WACHS	Absent
WALTERS	Yes
*FERRARO	Yes

Present: 12, Yes: 12 No: 0

PLANNING AND LAND USE MANAGEMENT COMMITTEE
SUGGESTED NOTIFICATION OF COUNCIL ACTION

Council File No. 98-1384

sign

Applicant/Appellant/Owner

Representative

Mulholland Tomorrow

Corin L. Kahn

% Barry Read

Attorney at Law

210 Carriage Place

15060 Ventura Bl. Ste. 490

Manhattan Beach 90266

Sherman Oaks, 91403

☒ Council Member(s) 2, 4, 5 & 11

☒ Planning Commission (~~w/ file~~)

Other

☒ Director of Planning

☐ Board of Zoning Appeals

☐ Office of Zoning Administration (2 copies)

☒ Advisory Agency

☒ Planning Department - Community Planning Section

☐ Planning Department - GIS Section - Attn: Fae Tsukamoto
221 North Figueroa Street, Room 900

☐ Information Technology Agency

☒ Bureau of Engineering, Development Services Division - Attn: Glenn Hirano

☐ Department of Transportation, Traffic/Planning Sections

☒ Department of Building & Safety c/o Zoning Coordinator

☐ Bureau of Street Lighting, "B" Permit Section

☐ Department of Water and Power

Other

☐ Fire Department

☐ Police Department

☐ Community Development Department

☐ City Attorney-Attn:

☐ City Administrative Officer

☐ Office of the Mayor (w/file) - Section _____

☐ Los Angeles County Assessor

To <i>Kenneth Carter</i>	From <i>Bob Sutton</i>
Co./Dept.	Co.
Phone #	Phone #
Fax # <i>237-0636</i>	Fax # <i>580-1176</i>

MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN 3D EXEMPTION INTERPRETATION

Section 3D of the MSPSP is hereby interpreted to exempt only those aspects¹ of any project for which an application was filed, subjected to a public hearing with legally adequate notice, and for which the project received one of the listed discretionary approvals, and such discretionary approval had explicit findings and conditions of approval which reflect the Scenic Corridor Section of the Mulholland Scenic Parkway Report² and which were then imposed by either the Citizen Advisory Committee, City Planning Commission, Deputy Advisory Agency, Planning Director or the City Council. In the event the rules governing the project have changed, whether voluntarily, such as an application for a new permit or a changed project, or in the event of an involuntary change, such as a city-initiated change in zone which would change the development requirements, the provisions of this exemption shall not apply³.

¹ Only those aspects of projects which were demonstrably evaluated for the project's compliance with LAMC Division of Land Section 17.05S, if applicable, and the spirit and intent of the proposed draft Mulholland Scenic Parkway Specific Plan would be considered to be exempt from the provisions of the Specific Plan and review by the Design Review Board. Issues raised pursuant to the applicable version of the Specific Plan, not already adequately considered pursuant to this interpretation, specifically would not be exempt.

² See page 17 of the Mulholland Scenic Parkway Report.

³ To find otherwise would be inconsistent with all other policies which govern planning decisions in the City. It was never the intent of the Council as part of its AB283 downzoning to allow greater development rights than was allowed before the downzoning including any exemption from the Specific Plan.

J. MICHAEL CAREY
City Clerk

When making inquiries
relative to this matter
refer to File No.

CITY OF LOS ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR

Office of the
CITY CLERK
Council and Public Services
Room 615, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
General Information - (213) 485-5705

98-1437

October 5, 1998

ALL COUNCILMEMBERS:

The attached copy of a Mitigated Negative Declaration, in connection Council File No. 98-1437 is being sent to you for your information and review before it is considered by the City Council on October 7, 1998, as Item No. 4, Council District No. 7.

J. Michael Carey

City Clerk
crm



MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN 3D EXEMPTION INTERPRETATION

Section 3D of the MSPSP is hereby interpreted to exempt only those aspects of any project for which an application was filed, subjected to a public hearing with legally adequate notice, and for which the project received one of the listed discretionary approvals, and such discretionary approval had explicit findings and conditions of approval which reflect the Scenic Corridor Section of the Mulholland Scenic Parkway Report² which were then imposed by either the Citizen Advisory Committee, City Planning Commission, Deputy Advisory Agency, Planning Director or the City Council. In the event the rules governing the project have changed, whether voluntarily, such as an application for a new permit or a changed project, or in the event of an involuntary change, such as a city-initiated change in zone, the provisions of this exemption shall not apply.³

and

which would change development requirements

¹ Only those aspects of projects which were demonstrably evaluated for the project's compliance with LAMC Division of Land Section 17.05S, if applicable, and the spirit and intent of the proposed draft Mulholland Scenic Parkway Specific Plan would be considered to be exempt from the provisions of the Specific Plan and review by the Design Review Board. Issues raised pursuant to the applicable version of the Specific Plan, not already adequately considered pursuant to this interpretation, specifically would not be exempt.

² See page 17 of the Mulholland Scenic Parkway Report

³ To find otherwise would be inconsistent with all other policies which govern planning decisions in the City. It was never the intent of the Council as part of its AB283 downzoning to allow greater development rights than was allowed before the downzoning including any exemption from the Specific Plan.

Comtr
9-15-98

#6

98-1384

From: Steve Kim
To: CLERK.CLKCPS.KCARTER
Date: 8/12/98 10:00am
Subject: Request for Continuance of PLUM Meeting for CPC 98-0170(DRB)

The Department of City Planning would like to request that the two appeals of the Director's Interpretation for Section 3.D. (Project Exemptions) of the Mulholland Scenic Parkway Specific Plan, scheduled for the PLUM Committee meeting on next Tuesday, August 18, 1998, be continued to Tuesday, September 15, 1998. The case number in reference to the two appeals is CPC 98-0170(DRB). The two appellants for this case are Corin L. Kahn and Mulholland Tomorrow.

At its meeting on June 25, 1998, the City Planning Commission failed to make any recommendations on the above referenced appeal case. Therefore, pursuant to Section 97.2 of the Los Angeles City Charter, the matter has been referred to the City Council.

If you have any questions, please contact me at (818)756-9172.

CC: PLAZA.Bsutton

J. MICHAEL CAREY
City Clerk

When making inquiries
relative to this matter
refer to File No.

CITY OF LOS ANGELES

CALIFORNIA



RICHARD J. RIORDAN
MAYOR

Office of the
CITY CLERK
Council and Public Services
Room 615, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
General Information - (213) 485-5705

9-15
98-1384
CPC 98-0170 DRB
Var CDs

July 27, 1998

PLANNING & LAND USE MANAGEMENT COMMITTEE

In accordance with Council Rules, appeals filed by Corin L. Kahn and Mulholland Tomorrow relative to the Director of Planning's Interpretation (Project exemptions) of the Mulholland Scenic Parkway Specific Plan, was referred on July 24, 1998, to the PLANNING & LAND USE MANAGEMENT COMMITTEE.

J. Michael Carey
City Clerk
amm

HB



PLANNING & LAND USE MANAGEMENT COMMITTEE SPEAKERS

☒ SUPPORT
Project/Proposal

AGENDA

ITEM #

6

Date

9-15-98

☐ OPPOSE
Project/Proposal

Council

File #

98-1384

Phone No. (818) 346-5842

Name GORDON MURLEY

Address 4128 MORRO DR.

City WOODLAND HILLS

Zip Code

91364

Representing FED HLSD & CYD FEEN - SAN FERNANDO VALLEY FED

☐ Applicant

☐ Property Owner(s)

☒ Assoc.

☐ Other

☒ Appellant

☐ Surrounding
Property Owner(s)

☐ Organization

✓

PLANNING & LAND USE MANAGEMENT COMMITTEE SPEAKERS

APPELLANT

☒ SUPPORT
Project/Proposal

AGENDA
ITEM # 6 Date 9/15/98

☐ OPPOSE
Project/Proposal

Council
File # CF - 1384

Phone No. (310) 318-2777

Name BARRY READ

Address 7510 SUNSET BLVD

City LOS ANGELES Zip Code 90466

Representing MULTIOLLAND TOMORROW

☐ Applicant

☐ Property Owner(s)

☐ Assoc.

☐ Other

☒ Appellant

☐ Surrounding
Property Owner(s)

☒ Organization



PLANNING & LAND USE MANAGEMENT COMMITTEE SPEAKERS

APPELLANT

☒ SUPPORT
Project/Proposal

AGENDA
ITEM #

6

Date *9/15/98*

☐ OPPOSE
Project/Proposal

Council
File #

CF 98-1384

Phone No. *(818) 907-0986*

Name *CORIN L. KAHN*

Address *15060 VENTURA BLVD - STE 490*

City *SHERMAN OAKS CA* Zip Code *91403*

Representing *DR. NILES CHAPMAN*

☐ Applicant

☐ Property Owner(s)

☐ Assoc.

☐ Other

7 ☒ Appellant

☐ Surrounding
Property Owner(s)

☐ Organization





Los Angeles City Planning Commission

221 North Figueroa Street, Room 1600, Los Angeles, CA 90012-2601 (213) 580-5234

July 21, 1998

Honorable City Council
City of Los Angeles
Attention: Konrad Carter, Council PLUM Committee
Room 615, City Hall

Corin L. Kahn, Attorney at Law
15060 Ventura Boulevard, Suite 490
Sherman Oaks, California 91403

Mulholland Tomorrow
c/o Barry Read
210 Carriage Place
Manhattan Beach, California 90266

CITY PLAN CASE NO. 98-0170 DRB

Council District Nos. 2, 4, 5, 11

At the City Planning Commission meeting of June 25, 1998, two separate appeals of the Director's Interpretation for Section 3.D. (Project Exemptions) of the Mulholland Scenic Parkway Specific Plan were considered.

The City Planning Commission failed to make any recommendations. As such, pursuant to Section 97.2 of the Los Angeles City Charter, the matter will be presented to the City Council.

Vote (To take no action and refer the matter to City Council):

Moved: Weil
Seconded: Stonnington
Aye: Jackson
Absent: Schnabel, Scott



Gabriele Williams, Commission Executive Assistant
City Planning Commission

PLAN & LAND USE MGT.

JUL 24 1998

RECEIVED
CITY CLERK'S OFFICE

98 JUL 24 AM 7:42

[Handwritten signature]

BY CITY CLERK
DEPUTY

LOS ANGELES CITY PLANNING DEPARTMENT
STAFF REPORT TO THE CITY PLANNING COMMISSION

CASE/FILE NUMBER: CPC 98-0170 (DRB) (A)

COMMISSION MEETING:

DATE: June 25, 1998

TIME: After 8:30 A.M.*

PLACE: Sherman Oaks Women's Club
4808 Kester Avenue
Sherman Oaks, CA 91403

RELATED FILE: None

ENV'L. DOCUMENT: Not Applicable

COUNCIL DISTRICTS: 2, 4, 5, 11

 X PUBLIC HEARING required
 (or)
 Public Hearing completed
 or not required (public
 comment may be taken)
 INFORMATION ONLY

PLAN AREA MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN

TO: CITY PLANNING COMMISSION

FROM: CON HOWE, Director of Planning

SUBJECT/REQUEST: APPEAL OF DIRECTOR'S INTERPRETATION FOR SECTION 3.D (PROJECT
EXEMPTIONS) OF THE MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN

SUBJECT LOCATION: MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN

SUMMARY/MISC.: Appeal of the Director's Interpretation for Section 3.D of the Mulholland Scenic Parkway Specific Plan (MSPSP), which provides exemptions from design review and the provisions of the Specific Plan for a project that has discretionary approval on or before the effective date of the Specific Plan. Two separate appeals to the Planning Commission have been combined in this report since the issues discussed in the appeals are relatively the same.

RECOMMENDATION: Concur with the action of Director of Planning and disapprove the appeals of the Director's Interpretation of Section 3.D of the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943).

STAFF, PHONE: Deuk Perrin - (818) 756-9162 or Steve Kim - (818) 756-9172

ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda.

Written communications may be mailed to: City Planning Commission, 221 North Figueroa Street, Room 1600, Los Angeles, CA 90012-2601. While all written communications are given to the Commission, the initial packets are sent the week prior to the Commission's meeting date.

CITY OF LOS ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR

DEPARTMENT OF
CITY PLANNING
221 N. FIGUEROA STREET
LOS ANGELES, CA 90012-2601

CITY PLANNING
COMMISSION

PETER M. WEIL
PRESIDENT

ROBERT L. SCOTT
VICE-PRESIDENT

MARNA SCHNABEL

NICHOLAS H. STONNINGTON

ANTHONY N.R. ZAMORA

COMMISSION
EXECUTIVE ASSISTANT
(213) 580-5234

DEPARTMENT OF
CITY PLANNING
6255 VAN NUYS BOULEVARD
VAN NUYS, CA 91401
(818) 756-8044

CON HOWE
DIRECTOR
(213) 580-1160

FRANKLIN P. EBERHARD
DEPUTY DIRECTOR
(213) 580-1163

GORDON B. HAMILTON
DEPUTY DIRECTOR
(213) 580-1165

ROBERT H. SUTTON
DEPUTY DIRECTOR
(213) 580-1167

FAX: (213) 580-1176

CITY PLAN CASE NO. 98-0170 (DRB)(A)

Decision Date:

June 25, 1998

Time:

After 8:30 A.M.

Location:

Sherman Oaks Women's Club
4808 Kester Avenue
Sherman Oaks, CA 91403

TO:

City Planning Commission

FROM:

Con Howe
Director of Planning

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ATTACHED EXHIBITS	
Exhibit "A" - Director's Interpretation of Section 3.D	
Exhibit "B" - Appeal by Corin Kahn and all attachments to CPC only	
Exhibit "C" - Appeal by Mulholland Tomorrow and all attachments to CPC only	



SUMMARY AND RECOMMENDATIONS

Summary

The Mulholland Scenic Parkway Specific Plan (MSPSP) was adopted on June 29, 1992. Recently, a number of questions have been raised regarding Section 3.D for projects that are exempt from the provisions of the Mulholland Scenic Parkway Specific Plan, including a request to clarify the language in the provisions of Section 3.D. Therefore, on May 7, 1998, the Director of Planning issued a written interpretation to clarify for the general public the meaning of Section 3.D.

The Director of Planning issued the interpretation of Section 3.D of the MSPSP based on review of the public record including the original City Council's findings. The review of these findings indicated that the intent of Section 3.D in the Specific Plan was to avoid duplicate reviews for the same project, whether it was the Citizen Advisory Committee or the Advisory Agency that had reviewed the project. The City Council's findings indicated that there should be no separate review by the Mulholland Scenic Parkway Design Review Board if the original decision-making body had considered the spirit and intent of the Mulholland Scenic Parkway Report in its discretionary approval.

Two appellants, Corin Kahn and Mulholland Tomorrow, have filed separate appeals on the Director's Interpretation, stating that the interpretation is erroneous and contradictory to law. The appeals further state that this interpretation does not correctly explain the intent of the City Council in adopting the Mulholland Scenic Parkway Specific Plan, particularly with respect to exemptions and what constitutes a project as defined in the Specific Plan. Since the both appeals are similar in context, the two appeals have been combined in this report.


STAFF RECOMMENDATIONS

That the City Planning Commission -

Concur with the action of Director of Planning and approve the Director's Interpretation for Section 3.D (project exemptions) of the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943) issued on May 7, 1998.

Disapprove the two appeals filed separately by Corin Kahn and Mulholland Tomorrow.

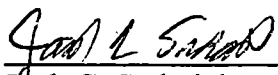
CON HOWE
Director of Planning



Robert H. Sutton
Deputy Director

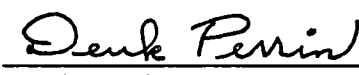
Date: 6/16/98

APPROVED BY:



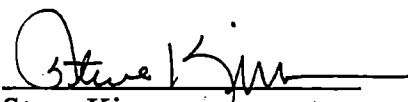
Jack C. Sedwick
Principal City Planner

REVIEWED BY:



Deuk Perrin
City Planner

PREPARED BY:



Steve Kim
Planning Assistant

STAFF REPORT

Background

The Director of Planning issued a written interpretation on May 7, 1998 in response to a number of requests for clarification of Section 3.D. More specifically, the question has been raised as to whether this Section would exempt a project which received discretionary approval at any time before the effective date of the Specific Plan, if the approval is still valid at the time of an application for a building permit. For example, would a tract map approval in 1936 which has recorded lots, exempt future construction of buildings and relative building permits on those lots from the provisions of the Mulholland Scenic Parkway Specific Plan?

Section 3.D of the Mulholland Scenic Parkway Specific Plan provides exemptions from design review and the provisions of the Specific Plan for those projects that secured discretionary approval on or prior to the effective date of the Specific Plan. The type of discretionary approval can be any of the following: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code. Additionally, the discretionary approval has to still be valid at the time an application for a building permit is filed and the application process for such discretionary approval had to have a public hearing.

The Director's Interpretation states that Section 3.D exempts projects that filed an application and received discretionary approval through a public hearing process before the effective date of the Specific Plan. Most importantly, it points out that the discretionary approval had to include Citizen Advisory Committee review of the project or explicit City Planning Commission, Director, Advisory Agency or Zoning Administrator findings and approval, which considered the spirit and intent of the Mulholland Scenic Parkway Report. Such interpretation would consider only those projects that meet this criteria to be exempt from the provisions of the Specific Plan and design review by the Mulholland Scenic Parkway Design Review Board. Two appellants, Corin Kahn and Mulholland Tomorrow, have filed separate appeals to the City Planning Commission on May 22, 1998 and May 27, 1998, respectively, regarding the Director's Interpretation of Section 3. D of the Mulholland Scenic Parkway Specific Plan.

The City Council adopted the Mulholland Scenic Parkway Report on March 26, 1973, which eventually became part of the Specific Plan. Additionally, effective October 3, 1974, it became the duty of the Advisory Agency to interpret and apply standards to tract and parcel map applications that were subject to the LAMC Division of Land Section 17.05S (MSPSP). Between 1982 and the effective date of the Specific Plan (June 29, 1992), a Citizen Advisory Committee was appointed to review projects to ensure conformance with the Mulholland Scenic Parkway Report.

Subdivisions and parcel map applications have been subject to the LAMC Section 17.05S since October 3, 1974. All discretionary approvals considered between April 24, 1982 and June 29, 1992 should have been reviewed by the Citizen Advisory Committee. The Director's Interpretation states that only those projects that considered the spirit and intent of the Mulholland Scenic Parkway

Report in their prior discretionary approvals would be considered to be exempt from the provisions of the Specific Plan and design review by the Mulholland Scenic Parkway Design Review Board. Staff would be required to review each building permit request in relation to the discretionary approval and findings before determining if a project was exempt.

In their appeals both appellants state that the Director's Interpretation of Section 3.D is erroneous and contradictory to law. Mr. Kahn claims that this interpretation will result in the continued degradation of the Mulholland Scenic Parkway. He further claims that this interpretation does not correctly view the intent of the City Council in adopting the Specific Plan, particularly with project exemptions and the definition of a project.

Mulholland Tomorrow is concerned with the preservation of the scenic and environmental characteristics of the Mulholland Scenic Parkway and supports the full implementation of the Specific Plan. It claims that this interpretation will adversely affect the scenic and environmental characteristics of the Mulholland Scenic Parkway, and thwart the full implementation of the Specific Plan, all to the detriment of the members and supporters of Mulholland Tomorrow who are property owners and homeowners along the Mulholland Scenic Corridor and citizens of the City of Los Angeles who use and enjoy the Parkway. It further goes on to say that this interpretation is inconsistent with the City Council's purpose and intent in adopting the Specific Plan, and therefore is erroneous.

The Director's Interpretation, however, is not erroneous nor contradictory to any provisions of the Specific Plan. It clarifies the intent and purpose of the provisions in Section 3.D. The Director issued the interpretation based on review of the public record and the findings adopted by the City Council for the MSPSP to insure that the Specific Plan was being implemented consistently with the intent of this section. These findings clearly indicated that the intent of Section 3.D was to avoid duplicate review processes, while projects had to conform to the spirit and intent of the Mulholland Scenic Parkway Report prepared by the Citizen Advisory Committee.

Discussion

The appellant, Corin Kahn, discusses several issues in reference to Section 3.D of the Mulholland Scenic Parkway Specific Plan, including a residentially zoned property at 11979 Pinnacle Place, Big House Ordinance, and Hillside Ordinance. The property discussed in the appeal, 11979 Pinnacle Place, is not addressed in this report since the interpretation is not intended for any specific property.

Instead, it provides clarification for types of projects that could qualify for exemptions under the specific plan provisions. The Big House and Hillside Ordinances are separate code provisions which apply to projects citywide. They are not directly connected with the Mulholland Scenic Parkway Specific Plan and therefore not applicable to the Director's Interpretation. The other appellant, Mulholland Tomorrow, raises a consistency issue between the language of the Specific Plan and the Director's Interpretation.

The main point of this appeal is that the Director's interpretation of Section 3.D is not correctly interpreted and that it is not consistent with the City Council's findings for the purpose and intent of the Mulholland Scenic Parkway Specific Plan.

Section 3.D of the Mulholland Scenic Parkway Specific Plan ordinance states:

“The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.”

The language of this section alone could virtually exempt any project that received any of the listed discretionary approval through a public hearing process before the effective date of the Specific Plan, including a tract map approved and recorded in 1936. This means future construction of buildings on those lots could be exempt from the provisions of the Specific Plan and design review by the Board. Therefore, it became necessary to look beyond this language and review the City Council's findings in adopting the Specific Plan. The review of those findings clearly indicated that the intent of Section 3.D was to avoid duplicate review processes for the same project. Provided, however, that the project considered the spirit and intent of the Mulholland Scenic Parkway Report in the application process for discretionary approval. Pursuant to our review of the Council File, the City Council's Findings (Finding #5) state:

5. Section 3D (Specific Plan Application) “Projects which have received discretionary approval before the effective date of this Specific Plan and such approval is still valid at the time an application for a building permit is filed and in that process were subject to a public hearing are exempt from the provisions of the Specific Plan. These discretionary approvals include change of zone, height district change, specific plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or Zoning Administrator approval pursuant to Section 12.27 of the Code. This provision is provided since there is no intent to duplicate other project review processes. The Citizen's Advisory Committee for the Mulholland Scenic Parkway has been reviewing proposed project since approximately 1982 within the Specific Plan area to insure that they conform to the spirit and intent of the report of the Citizen's Advisory Committee on the Mulholland Scenic Parkway, and Since subdivisions and parcel map applications have been subject to the LAMC Section 17.05S, Mulholland Scenic Parkway, such projects have already been reviewed as to their conformity with the intent of Mulholland Scenic Parkway and therefore do not require further review.”

The Director's Interpretation is based on the City Council's stated intent pursuant to the above findings that were adopted for the MSPSP by the City Council. Additionally, on March 26, 1973, the City Council adopted the Report of the Citizens' Advisory Committee on the Mulholland Scenic Parkway for the purpose of guiding developments. This report was known as the Mulholland Scenic Parkway Report, which later became the Design Development Manual. Today, the Specific Plan has provisions requiring conformance with the spirit and intent of the Mulholland Scenic Parkway Report.

According to the City Council's findings, a Citizen Advisory Committee was reviewing projects in the Mulholland Scenic Parkway between 1982 and the effective date of the Specific Plan. The Committee's review was to ensure that projects conformed to the spirit and intent of the Mulholland Scenic Parkway Report. Additionally, on October 3, 1974, Section 17.05S was provided in the LAMC Division of Land, incorporating the same provisions contained in the Mulholland Scenic Parkway Report. Since then, it became the duty of the Advisory Agency to interpret and apply these provisions to tract and parcel map applications.

The intent of these various findings was to prevent duplicate review processes for the same project. The Citizen Advisory Committee had reviewed the projects that received discretionary approvals between April 24, 1982 and June 29, 1992. The Advisory Agency has been applying the provisions of the Mulholland Scenic Parkway to subdivisions and parcel map applications since October 3, 1974.

Conclusion

The Director's Interpretation is intended to clarify for the general public the meaning, purpose and intent of the provisions in Section 3.D of the Mulholland Scenic Parkway Specific Plan. Because several questions have been raised regarding this section and projects that are exempt from the Specific Plan, the Director issued this interpretation.

Based on review of the City Council's findings and intent of Section 3.D, only those projects that received discretionary approval, which considered the spirit and intent of the Mulholland Scenic Parkway Report, would be considered to be exempt from the provisions of the Specific Plan and design review by the Board. This interpretation is consistent with the City Council's findings and in no way prejudice any project.

Exhibit "A" - Director's Interpretation of Section 3.D

CITY OF LOS ANGELES
CALIFORNIA

DEPARTMENT OF
CITY PLANNING
221 N. FIGUEROA STREET
LOS ANGELES, CA 90012-2601

CITY PLANNING
COMMISSION

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PRESIDENT

ROBERT L. SCOTT
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NICHOLAS H. STONNINGTON
ANTHONY N.R. ZAMORA

COMMISSION
EXECUTIVE ASSISTANT
(213) 580-5234



RICHARD J. RIORDAN
MAYOR

May 7, 1998

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(213) 580-1172

All Interested Parties:

**INTERPRETATION OF SECTION 3.D., WHICH EXEMPTS PROJECTS THAT HAVE
SECURED DISCRETIONARY APPROVAL ON OR BEFORE THE EFFECTIVE DATE OF THE
MULHOLLAND SCENIC PARKWAY DESIGN REVIEW BOARD AND FROM THE
PROVISIONS OF THE SPECIFIC PLAN**

Attached is a copy of the Department of City Planning's interpretation of Section 3.D. of Ordinance Number 167,943, which established the Specific Plan for the Mulholland Scenic Parkway. This published interpretation becomes final and effective 20-days from the date of this communication unless an appeal to the City Planning Commission is filed within this time period. Appeals shall be filed in duplicate on forms provided at any of the following public offices of the Department of City Planning, along with the required filing fee:

Planning Department - Public Counter
201 North Figueroa Street, 3rd Floor
Los Angeles, CA 90012
Phone: (213) 977-6083

San Fernando Valley Office
6251 Van Nuys Boulevard
Van Nuys, CA 91401
Phone: (818) 756-8596

If you have any questions regarding this case, please contact Jack Sedwick at (213) 485-6354 or Steve Kim at (818) 756-9172.

Sincerely,

CON HOWE
Director of Planning

ROBERT H. SUTTON
Deputy Director

Attachment

cc: Councilmember Joel Wachs, CD #2
Councilmember John Ferraro, CD #4
Councilmember Michael Feuer, CD #5
Councilmember Cindy Miscikowski, CD #11
John A. Diaz, Chairman, Mulholland Scenic Parkway Design Review Board
Mulholland Scenic Parkway Design Review Board Members
Richard Holguin, Building and Safety Department
Robert Janovici, Department of City Planning
Gordon Murley, Federation of Hillside and Canyon Property Owners
Corin L. Kahn, Esq.

PUBLIC COUNTER & CONSTRUCTION SERVICES CENTER
CITY HALL - 200 N. SPRING STREET, RM. 460S - (213) 485-7826
VAN NUYS - 6251 VAN NUYS BLVD., 1ST FLOOR, VAN NUYS 91401 - (818) 756-8596

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MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN (ORDINANCE NO. 167,943)

DIRECTOR OF PLANNING SPECIFIC PLAN INTERPRETATION

SUBJECT

INTERPRETATION OF SECTION 3.D., WHICH EXEMPTS PROJECTS THAT HAVE SECURED DISCRETIONARY APPROVAL ON OR BEFORE THE EFFECTIVE DATE OF THE MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN FROM DESIGN REVIEW BY THE MULHOLLAND SCENIC PARKWAY DESIGN REVIEW BOARD, AND FROM THE PROVISIONS OF THE SPECIFIC PLAN.

DISCUSSION

This interpretation is limited to Section 3.D. of the Mulholland Scenic Parkway Specific Plan (MSPSP) ordinance which states:

“The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.”

The question has been raised as to whether the above Section would exempt a project which received any of the listed discretionary approvals at any time prior to the effective date of the Specific Plan, if the approval is still valid at the time of an application for a building permit. For example, would a tract map approval in 1936 which has recorded lots, exempt all future building construction on those lots from the provisions of the MSPSP?

Our review of the City Council's findings is that the intent of this section in the Specific Plan was to avoid duplicate reviews for the same project. The City Council included in its findings, Finding #5 which states:

5. Section 3D (Specific Plan Application) “Projects which have received discretionary approval before the effective date of this Specific Plan and such approval is still valid at the time an application for a building permit is filed and in that process were subject to a public hearing are exempt from the provisions of the Specific Plan. These discretionary approvals include change of zone, height district change, specific plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or Zoning Administrator approval pursuant to Section 12.27 of the Code. This provision is provided

since there is no intent to duplicate other project review processes. The Citizen's Advisory Committee for the Mulholland Scenic Parkway has been reviewing proposed project since approximately 1982 within the Specific Plan area to insure that they conform to the spirit and intent of the report of the Citizen's Advisory Committee on the Mulholland Scenic Parkway, and since subdivisions and parcel map applications have been subject to the LAMC Section 17.05S, Mulholland Scenic Parkway, such projects have already been reviewed as to their conformity with the intent of the Mulholland Scenic Parkway and therefore do not require further review."

The Mulholland Scenic Parkway has provisions requiring conformance with the spirit and intent of the Report of the Citizens' Advisory Committee on the Mulholland Scenic Parkway as adopted by the City Council March 26, 1973. Additionally, effective October 3, 1974, it became the duty of the Advisory Agency to interpret and apply standards to tract and parcel map applications that were subject to the LAMC Division of Land Section 17.05S. Between 1982 and the effective date of the MSPSP (June 29, 1992), a Citizen Advisory Committee was appointed to review projects in the Plan area. The Committee's review was to ensure that proposed projects conformed to the spirit and intent of their "Mulholland Scenic Parkway Report" (the "Green Book"), which later became the Design Development Manual.

Since the 1992 effective date of the Specific Plan, all projects (other than those with exemptions) have been subject to design review by the Board and to the provisions of the Specific Plan, including those projects that received new discretionary approvals after 1992.

Section 3.D. of the Specific Plan exempts projects that were by application, subject to a public hearing and secured discretionary approval on or before the effective date of this Specific Plan, if such approval is still valid at the time an application for a building permit is filed. Based on the review of the findings of the City Council's action in adopting the MSPSP, the intent of this section is to prevent the duplication of other project review processes. Discretionary approvals considered between April 24, 1982 and June 29, 1992 should have been reviewed by the Citizen Advisory Committee. Subdivisions and parcel map applications have been subject to the LAMC Section 17.05S since October 3, 1974.

INTERPRETATION

Section 3.D. of the MSPSP is hereby interpreted to exempt projects that filed an application, were subject to a public hearing and received one of the listed discretionary approvals, if such discretionary approval had Citizen Advisory Committee review of the project or explicit City Planning Commission, Director, Advisory Agency or Zoning Administrator findings and approval of the same. Only those projects that received such discretionary approval, which considered the spirit and intent of the Mulholland Scenic Parkway Report, would be considered to be exempt from the provisions of the Specific Plan and design review by the Board.

Exhibit "B" - Appeal by Corin Kahn and All Attachments to CPC

CITY OF LOS ANGELES
PLANNING DEPARTMENT

MASTER APPEAL FORM

APPEAL TO THE: Planning Commission

REGARDING CASE NO.: Director's Interpretation of Section 3(D) Mulholland CT

This application is to be used for any authorized appeals of discretionary actions by the Planning Department. Appeals must be delivered in person with the following information filled out and be in accordance with the Municipal Code. A copy of the action being appealed must be included. If the appellant is the original applicant, a copy of the receipt must also be included.

APPELLANT INFORMATION: PLEASE PRINT CLEARLY

Name Corin L. Kahn
Mailing Address 15060 Ventura Blvd. Ste 490
Sherman Oaks, CA Zip 91403

Work Phone: (818) 907-8986 Home Phone ()

- a) Are you or do you represent the original applicant?
(Circle One) ~~YES~~ NO
- b) Are you filing to support the original applicant's position?
(Circle One) ~~YES~~ NO
- c) Are you filing for yourself or on behalf of other parties, an organization or company? (Circle One) ~~SELF~~ OTHER
- d) If "other" please state the name of the person(s), organization or company (print clearly or type)
Dr. and Mrs. Niles Chapman

REPRESENTATIVE

Name Corin L. Kahn
Mailing Address 15060 Ventura Blvd. Ste 490
Sherman Oaks, CA 91403
Zip

Work Phone: (818) 907-8986 Home Phone: ()

APPEAL INFORMATION

A complete copy of the decision letter is necessary to determine the final date to appeal, under what authorizing legislation, and what, if any, additional materials are needed to file the appeal.

Final Date to Appeal: May 27, 1998
Authorizing Legislation MSPSP Sec. 11. I & IAMC Sec. 12.21 A.2.

REASONS FOR APPEALING

Are you appealing the entire decision or parts of it?



Entire



Part

Indicate: 1) How you are aggrieved by the decision; and 2) Why do you believe the decision-maker erred or abused their discretion? If you are not appealing the whole determination, please explain and specifically identify which part of the determination you are appealing.

Attach additional sheets if necessary.

This interpretation will result in the continued degradation of
the Mulholland Scenic Parkway. The interpretation does not

correctly interpret the intent of the City Council in adopting
the Mulholland Scenic Parkway Specific Plan, particularly with
respect to exemptions and what constitutes a project as defined

in the Specific Plan. (See attached copies of letters to the DRB.)

ADDITIONAL INFORMATION

- original applicants must pay mailing fees to BTC and submit copy of receipt.
(BTC not required for Building and Safety Appeals)
- any additional information or materials required for filing an appeal must be provided in accordance with the LAMC regulations as specified in the original determination letter. **Copy of determination/decision letter required.**
- acceptance of a complete and timely appeal is based upon successful completion and examination of all the required information.
- if appeal is to the Board of Zoning Appeals six copies are required.

I certify that the statements contained in this application are complete and true:

Appellant

[Signature]

OFFICIAL USE ONLY

Receipt No. 210792 Amount \$71- Date 5-22-98

Application Received By [Signature]

Application Deemed Complete _____

Copies provided:



Determination



Receipt (original
applicant only)

Determination Authority Notified (if necessary)



CORIN L. KAHN
ATTORNEY AT LAW
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SHERMAN OAKS, CALIFORNIA 91403
TELEPHONES
(818) 907-8986 • (310) 859-7730
FAX (818) 907-9898

November 4, 1997

Hon. Councilmember Michael Feuer
Councilman, 5th Council District
Los Angeles City Council
Room 237
City Hall
200 North Spring Street
Los Angeles, CA 90012

**RE: 11979 Pinnacle Place; Lot 23, Tract 29033; Erroneous
Determination Of Exemption From Mulholland Scenic Parkway
Specific Plan and Big House Ordinance**

Dear Hon. Councilmember Feuer:

This office was recently retained to represent Dr. and Mrs. Niles Chapman, owners of the real property located at 11975 Pinnacle Place, in the Sherman Oaks area, immediately next door to 11979 Pinnacle Place ("Subject Property"), the subject of this dispute, which is owned by Groman Mortuaries ("Groman"). We are informed that Groman intends to develop the Subject Property with an approximately 12,000 square foot single family home (the "Project") without complying with the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943, adopted by the City Council on May 13, 1992) (the "Specific Plan") or the Big House Ordinance (Ordinance No. 169,775, adopted by the City Council on April 26, 1994) based on erroneous interpretations by the Department of City Planning (the "Department") that exemptions to the Specific Plan and Big House Ordinance are available to Groman.

SUMMARY

The Department's interpretations regarding the application of these alleged exemptions is erroneous and contradictory to law. With respect to the Specific Plan, an application for a building permit is a separate action by the City and therefore it is a new

Councilman Michael Feuer
November 4, 1997
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"project" as defined by the Specific Plan. Whereas the tract approval may have been "grandfathered", an as yet unissued building permit does not enjoy this privilege.

With respect to the Big House Ordinance, a project located in the Hillside Area which might otherwise claim an exemption under LAMC 12.21 A 17 (i) (2) ("the fully improved street" exemption) should be treated as being not located in the Hillside Area and instead subject to LAMC Sections 12.07.01 C 2 (a - c) which require a ten foot (10') side yard setback plus an additional one foot (1') for each increment of ten feet or fraction thereof above the first 18 feet of height of the main building. The elimination of the exemptions from the Big House Ordinance is reinforced in this case by the substandard lot size within the zone.

We respectfully request that you immediately institute the necessary procedures to monitor any permit activity for 11979 Pinnacle Place, the Subject Property, so that these and other related issues can be properly discussed and resolved before any permit is issued.

FACTUAL BACKGROUND

The Subject Property is an undeveloped unimproved parcel located within the Outer Corridor as defined in the Specific Plan, legally described as Lot 23 of Tract 29033 (the "Tract"), and is part of the development known as the Summit Above Beverly Hills. The application for the Tract was filed on July 29, 1975, which was approved on February 5, 1980. Significantly, the Tract was not filed as a vesting tract map pursuant to *Government Code* Section 66498.1. Since the approval of the Tract, the City enacted the Specific Plan, however, the goals and policies of the Report Of The Citizens' Advisory Committee On The Mulholland Scenic Parkway have been in effect since its adoption by the City Council on October 1971, as implemented by the Citizens Advisory Committee ("CAC"). Also since the approval of the Tract, the City adopted the "Big House" Ordinance.

The Subject Property is 22,134 square feet, a substandard nonconforming irregularly shaped lot in the RE40-1-H zone. The zoning at the time of the subdivision was RE-15, which subsequently was down zoned as part of the Citywide AB 283 zoning roll back to achieve zoning consistency. The Applicants have applied for and been granted two variances, a yard variance (ZA 96-1046YV) and a slight modification (ZA 96-0147SM) which they are presently declining to use. A new design, which Groman argues requires no variance, was presented to the Architectural Review Board for the Home Owners Association for the Summit on October 15, 1997. The new Project has eleven foot (11') side yard setbacks, is three (3) stories and is thirty-nine feet (39') in height except that on its north side the total height from grade is considerably higher.

We are informed that the Applicant has elected not to proceed with the form of the Project requiring the two variances because, *inter alia*, the Department has taken the

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Page 3

position that Groman's application for a building permit is exempt based on Section 3(D) of the Specific Plan because it is located within a tract which received approval before the Specific Plan was enacted.

ANALYSIS

There is nothing in the record which would support the position that the Project is entitled to an exemption under the Specific Plan or the Big House Ordinance nor are there any vested rights to build the Project. Consequently, the Project, here a building permit, is subject to all of the rules and regulations in effect on the date it is approved. While it is conceded that the recordation of the Tract enables Groman to build a single family on the Subject Property despite the nonconformity of the lot with today's zoning requirements, at issue here is what rules and regulations are applicable to the Project.

The Specific Plan

The Specific Plan defines Project as:

the construction of any building or structure, or the addition to, alteration, conversion, or change of use of any land, building, or structure on a lot located in whole or in part within the Specific Plan Area;

The application to the City for any permit required to build a home, including a building permit, or grading permit, is a "project" as that term is defined in the Specific Plan.

The application which created the Tract, also would have constituted a "project" within this definition had the Specific Plan been in effect at the time of its approval. Instead, however, the Tract was subject to the provisions of the Report Of The Citizens' Advisory Committee On The Mulholland Scenic Parkway, the precedent to the Specific Plan. However, the definition of "project" is sufficiently broad that each step of approval required for the development under a permit raises separate issues and thus is considered a separate "project" under the Code. Absent vesting, the general rule is that each such permit is governed by the rules in effect at the time it is issued.

There is nothing in the file or in the legislative history of the Specific Plan which would support an argument that Groman has any rights to build the Project without complying with the Specific Plan. Section 3 (D) of the Specific Plan, relied on by the Department, states:

The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to

Councilman Michael Feuer
November 4, 1997
Page 4

an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.

The Department obviously is interpreting this exemption too broadly. Utilizing the first tool of legislative construction, the "plain meaning" of the language, the section simply states that if you received an earlier approval, that earlier approval, and only that approval remains valid until you pull a building permit or it lapses, which ever occurs first. Had the City Council intended to exempt building permits, it could simply have stated that any building permit was exempt when an earlier discretionary approval had been received. Instead, the reference to building permits in the exemption language is in the context of the timing in which the previously granted discretionary approval remains in effect. Here, the language states that at the time you are ready to pull a building permit, if your previously granted discretionary approval is still valid, then notwithstanding the subsequent approval of the Specific Plan that previously granted discretionary approval is valid. This is standard language since it is perceived that it would be unfair to subject a project to a "second bite at the apple".¹ Here, however, there is no second bite since the issues pertaining to the issuance of the building permit have never been examined by the governing review authority, i.e., CAC, DRB, or the City.

Nothing stated in Section 3(D) suggests the intention to create a blanket exemption for subsequent "projects", such as a building permit, without it first complying with subsequently enacted rules and regulations. Exemptions such as this one must be construed narrowly.²

The Department's interpretation of this exemption also is not supported by common sense because it would mean that the Specific Plan eliminated what, up until then, had been the long-standing requirement of review by the Mulholland CAC before a building permit could be obtained. Building permit review was required before the Specific Plan was enacted and the Specific Plan merely shifted review authority to the Design Review Board. It did not carve away review authority of any projects within the Specific Plan including building permits. Consequently, if review of a building permit was required before the Specific Plan was enacted, common sense dictates that it is required after its adoption.

³In discerning legislative intent, the adjudicator must be vigilant to preserve the spirit of the act and to prevent a distortion of its purposes. Clearly, one important purpose

¹ This interpretation is consistent with the common practice that in many instances, legislative acts affecting substantive rights are not retroactively applied.

² The general rule is that where there is specified an exception to the general rule, other exceptions are not to be implied or presumed.

³

Councilman Michael Feuer
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of the enactment of the Specific Plan was to tighten control over development within the Specific Plan area.

Furthermore, no specific rights have vested as a matter of law other than the right to build a single-family house on the lot by virtue of the recordation of Tract 29033. The Tract was approved prior to the enactment of the vesting provisions for tract maps set forth at Government Code Section 66498.1 (adopted by the State in 1984, effective January 1, 1986 for residential developments) and nothing else has been done to confer vested status. Even if the City had tried to convey vested rights by the exemption of Section 3(D), which we strongly contend was not the City's intent, such an attempt fails as an unlawful delegation of the City's police power. *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 23, fn 20. Without any vested rights, the general rule requires that the Project must comply with the laws in effect at the time when a building permit is issued. *Hazon-Iny Development, Inc. v. City of Santa Monica* (1982) 128 Cal. App. 3rd 1, 10-11.

In this case, for all of the above-stated reasons, the application for a building permit must comply with the Specific Plan. Although an application has not yet been filed, we have brought this issue to your attention because we are concerned about the erroneous interpretation that the Department has taken with respect to this Project and to other similar building permits involving the same or similar circumstances. We are informed that Groman intends to file for a building permit soon and request that your office monitor all permit activity on the Subject Property so that these issues may be properly considered before any final decision is reached.

The Big House and Hillside Ordinances

We are also informed that the Department is taking the position that the Big House Ordinance does not apply to the proposed Project. This too is an erroneous interpretation of the applicable law. Although the applicable code sections are difficult to reconcile, they have been the subject of a recent ZAI (ZA 96-0241) which helps to clarify the City's intentions with respect to these two provisions. In order to comply with the City's intentions in enacting the Big House and Hillside ordinances the side yard standards require a 13 foot side yard or greater on both sides of the Project.

RE Residential Estate Zone, Sections 12.07.01 C 2 (b) and (c) of the City's Municipal Code (Big House Ordinance, No. 169,775) provides that the side yard in the RE 40 Zone shall be not less than 10 feet on each side of the main building. It also states ambiguously that in certain zones which are not located in the hillside area, if the main building exceeds 18 feet, then the side yard shall be increased one foot for each increment of ten feet or fraction thereof above the first 18 feet above the main building. If the Project were not within the Hillside Area, by application of the Big House Ordinance, the City would require a 13-foot side yard set back assuming a building 39 feet in height.

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Page 6

The General Provisions, Section 12.21 A 17 (b) (2) (Hillside Ordinance, No. 168,159) provides that the side yard in the Hillside Areas is the base amount required in the zone in which the lot is located, and shall be increased "one foot for each increment of ten feet or fraction thereof above the first 18 feet above the main building." However, there is an exemption from this provision where the hillside lot fronts on streets with a 28-foot wide improved roadway Section 12.21 A 17 (i) (2). Therefore, the Department contends that the Project is exempt from the Big House Ordinance because it is located in the Hillside Area and is exempt from the Hillside Ordinance because the Subject Property fronts on a fully improved street.

However, by ZAI (ZA 96-0241), dated April 2, 1996, the question was addressed of whether the City intended a blanket exemption for houses in the hillsides located on properly developed streets. In that interpretation, the Chief Zoning Administrator opined that as to all lots in the RA, RE9, RE11, RE15, RE20, RS and R1 zones "it was not the intent to create a 'no man's land' with which certain property owners would have greater development rights than would be afforded other property owners in the same zone and geographic area. Such a result would serve neither fairness nor logic." For reasons not reflected in the file, the RE40 zone was left out of the ZA's interpretation. Further complicating the interpretation of the City's intentions is the fact that the Subject Property was created to comply with the standards for the RE15 zone which has since been down zoned to RE40. Thus, whatever reasons may have applied to the ZA's decision to leave the RE40 zone out of his ZAI, these reasons should do not apply to a nonconforming substandard lot in the RE40 zone. Examined in another way, since the Subject Property was designed to comply with the RE15 zone, the ZA's opinion that no blanket exemption was intended in interpreting the Big House and Hillside Ordinances, applies in exactly the same manner in this case as it applies to the RE15 and RE20 zones.

Ironically, had the Subject Property not been down zoned, the ZAI would have applied on its face and the Project would have been required to provide a 13-foot side yard to comply with the Big House Ordinance. It would be contrary to logic to allow a more liberal interpretation when the intent of the down zoning was to make the zoning more restrictive.

For all of these reasons, it should be clear that the City never intended to exempt the Project from the more restrictive provisions of the Big House and Hillside Ordinances to the detriment of the neighbors including our clients.

CONCLUSION

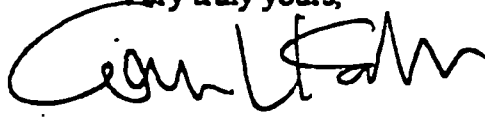
The Department's erroneous interpretations regarding the exemptions from the Specific Plan, Big House and Hillside Ordinances is erroneous and contradictory to law. An application for a building permit is a separate action by the City and therefore it is a

Councilman Michael Feuer
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Ordinance in this case is reinforced by the fact that the lot design does not comply with the minimum standards for the RE40 lot.

We ask that you immediately institute the necessary procedures to monitor any permit activity for 11979 Pinnacle Place, the Subject Property, so that before any permit is issued, these and other related issues can be properly discussed and resolved. If you have any questions, do not hesitate to call.

Very truly yours,



Corin L. Kahn

cc: Dr. & Mrs. Niles Chapman
Mr. John Diaz, President DRB
Mr. Richard Holguin, Interim General Manager, Dept. Building & Safety
Mr. Con Howe, Director of Planning
Robert Janovicki, Esq., Chief Zoning Administrator
Mr. Steven Kim, City Planner
Mulholland Tomorrow

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January 12, 1998

Mr. John Diaz, Chairperson
and Members of the
Design Review Board
Mulholland Scenic Parkway Specific Plan
Sookie Goldman Nature Center
2600 Franklin Canyon
Beverly Hills, CA 90210

**RE: Erroneous Interpretation Of Exemption 3(D) Regarding
Mulholland Scenic Parkway Specific Plan**

Dear Chairman Diaz

INTRODUCTION

This office was recently retained to represent Dr. and Mrs. Niles Chapman regarding a misinterpretation by the Department of City Planning (the "Department") of an exemption set forth in the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943, adopted by the City Council on May 13, 1992) (the "Specific Plan"). We are informed that the Department interprets Section 3(D) to grant an exemption to an application for a building permit in those instances in which a building permit is sought for a lot within a tract which tract received approval prior to enactment of the Specific Plan. Said in simpler terms, the Department's position is that a building permit for an unbuilt lot lawfully subdivided prior to the enactment of the Specific Plan qualifies for a 3(D) exemption.

SUMMARY

To state the matter in its simplest terms is to reveal the absurdity of the Department's interpretation. This interpretation is erroneous and contradictory to law. An application for a building permit is a separate action by the City and therefore it is a new "project" as defined by the Specific Plan. Whereas the Specific Plan may have "grandfathered" a prior tract approval, an unissued building permit does not enjoy this privilege. Absent some specific vesting pursuant to substantive law, an unissued building permit is subject to all of the rules, regulations and policies in effect at the time it is issued.

ANALYSIS

The Specific Plan

The Specific Plan defines Project as:

the construction of any building or structure, or the addition to, alteration, conversion, or change of use of any land, building, or structure on a lot located in whole or in part within the Specific Plan Area;

The application to the City for any permit to build a home, whether a building permit or grading permit, is a separate "project" as that term is defined in the Specific Plan. The application which created the underlying tract in which the home construction is to occur constitutes its own "project" as that term is defined. Here, the definition of "project" is broad reflecting the City's actual review procedures. Each step of approval raises separate issues and thus each such review is considered a separate "project" under the Code.

There is nothing in the file or in the legislative history of the Specific Plan which would support an argument that Section 3 (D) provides a blanket exemption for any building permit for a lot lawfully created prior to enactment of the Specific Plan.

Section 3 (D) states:

The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.

The Department's interpretation obviously is too broad.

The Legislative Intent

Utilizing the first tool of legislative construction, the "plain meaning" of the language, the exemption simply states that if you received an earlier approval, that earlier approval and only that approval remains valid until you pull a building permit or the approval lapses, whichever ever occurs first. According to its "plain meaning", only the subdivision approval remains valid, a point we do not dispute.

In discerning the intent of the City Council, it is obvious that had it intended to exempt building permits, it would simply have stated so. Instead, the reference to building permits in the exemption language is clearly in the context of the timing in which the previously granted discretionary approval remains in effect. Here, the language states that at the time you are ready to pull a building permit, if your previously granted discretionary approval is still valid, then notwithstanding the subsequent approval of the

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Specific Plan that previously granted discretionary approval is valid. This is understandable since it is perceived that it would be unfair to subject a project to a "second bite at the apple".¹ Where, however, a separate permit is applied for, such as a building permit after subdivision approval, there is no second bite since the issues pertaining to the issuance of the building permit differ from those under consideration in subdivision review.

Nothing stated in Section 3(D) suggests the intention to create a blanket exemption for subsequent "projects" such as a building permit without first complying with subsequently enacted rules and regulations. Exemptions such as this one must be construed narrowly.²

The Department's interpretation of this exemption also is not supported by common sense. The Department's interpretation would mean that the Specific Plan eliminated what, up until then, had been the long-standing requirement of review by the Mulholland CAC before a building permit could be obtained. Even at that time a tract was subject to the provisions of the Report Of The Citizens' Advisory Committee On The Mulholland Scenic Parkway, the precedent to the Specific Plan. Building permit review was required before the Specific Plan was enacted. The Specific Plan merely shifted review authority to the Design Review Board. It did not carve away review authority of building permits within the Specific Plan area. Consequently, if review of a building permit was required before the Specific Plan was enacted, common sense and the legislative history dictates that it is required after its adoption.

In discerning legislative intent, the adjudicator must be vigilant to preserve the spirit of the act and to prevent a distortion of its purposes. Clearly, one important purpose of the enactment of the Specific Plan was to tighten control over development within the Specific Plan area.

The Doctrine of Vested Rights

Furthermore, when no specific rights have vested as a matter of substantive law, there is no other argument to support issuance of a building permit under a 3(D) exemption. Absent a legal basis for vesting, the general rule is that each such permit is governed by the rules in effect at the time it is issued.

A tract which was approved prior to the enactment of the vesting provisions for tract maps set forth at Government Code Section 66498.1 (adopted by the State in 1984,

¹ This interpretation is consistent with the common practice that in many instances, legislative acts affecting substantive rights are not retroactively applied.

² The general rule is that where there is specified an exception to the general rule, other exceptions are not to be implied or presumed.

John Diaz, Chairman
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effective January 1, 1986 for residential developments) did not vest any rights by virtue of mere recordation.

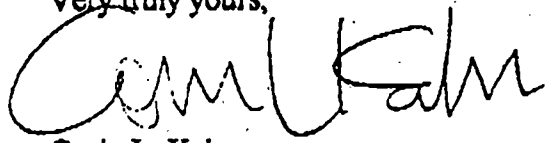
Even if the City had tried to convey vested rights by the provisions of the exemption of Section 3(D), which we strongly contend was not the City's intent, such an attempt fails as an unlawful delegation of the City's police power. *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 23, fn 20. Without any vested rights, the general rule requires that a building permit project must comply with the laws in effect at the time when a building permit is issued. *Hazon-Iny Development, Inc. v. City of Santa Monica* (1982) 128 Cal. App. 3rd 1, 10-11.

CONCLUSION

The Department's erroneous interpretation regarding the 3(D) exemption is contradictory to law. An application for a building permit is a separate action by the City and therefore it is a new "project" as defined by the Specific Plan. Although any given tract approval may have been "grandfathered" as a tract, an as yet unissued building permit within an approved tract is not entitled to an automatic grandfathering pursuant to the Specific Plan.

If you have any questions, do not hesitate to call.

Very truly yours,



Corin L. Kahn

cc: Hon. Councilman Michael Feuer, Fifth District
Dr. & Mrs. Niles Chapman
Mr. Jack C. Sedwick, City Planner
Mr. Steven Kim, City Planner
Mulholland Tomorrow

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May 21, 1998

Mr. John Diaz, Chairperson
and Members of the
Design Review Board
Mulholland Scenic Parkway Specific Plan
Sookie Goldman Nature Center
2600 Franklin Canyon
Beverly Hills, CA 90210

**RE: Objections To Director's Interpretation Of 3(D) Exemption
Regarding Mulholland Scenic Parkway Specific Plan**

Dear Chairman Diaz:

BACKGROUND

On or about November 4, 1997, this office sought a clarification regarding a misinterpretation by the Department of City Planning (the "Department") of the so-called 3(D) exemption to the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943, adopted by the City Council on May 13, 1992) (the "Specific Plan"). At that time, the Department's interpretation allowed an exemption for a building permit for a vacant lot within a tract which tract had received approval prior to enactment of the Specific Plan. By letter dated May 7, 1998, the Director circulated for public comment an Interpretation (the "Interpretation") which attempts to correct the loophole created by the Department's misinterpretation of the 3(D) exemption.

The Interpretation states essentially that any discretionary approvals issued earlier than the adoption of the Specific Plan that have been reviewed by the Citizen Advisory Committee or received explicit findings and approval by the Planning Commission, Director, Advisory Agency or Zoning Administrator, in which consideration was given to the "spirit and intent" of the predecessor to the Specific Plan, would continue to be exempt under the 3(D) exemption.

SUMMARY

Although the Interpretation will require compliance with the Specific Plan in some instances where an exemptions had previously been granted in error, which we support and applaud, the Interpretation does not address the fundamental objection raised by this office in its November 4th letter regarding the Department's erroneous interpretation of the 3(D) exemption. That objection was as follows:

Because a building permit is a separate project under the Specific Plan, it must comply with the Specific Plan regardless of any earlier discretionary approvals which may have been granted for the site prior to the adoption of the Specific Plan.

We disagree with the Interpretation and request a clarification to it which clearly states that a building permit is a separate project which must comply with the Specific Plan unless that building permit was granted previous to the adoption of the Specific Plan or some legally created vested rights were perfected by means other than the 3(D) exemption. In addition, we also wish to observe the following problems with the Interpretation:

- 1.) The Interpretation does not address the Department's erroneous contention, notwithstanding the language in the Specific Plan to the contrary, that a building permit is not a project.
- 2.) The Interpretation creates an ambiguous standard to the extent it requires a determination of whether the project received consideration of the "spirit and intent" of the Parkway and fails to state any clear procedure for making that determination, ie., is this determination made by the Department or by the Board?
- 3.) Does the Interpretation mean by its requirement of explicit Planning Commission, Director, Advisory Agency or Zoning Administrator findings and approval, explicit findings of consistency with the policies and goals of the Mulholland Scenic Parkway Report and which goals and policies of the Report must have been considered? Or does the project go to DRB for partial review for all of those issue not specifically addressed in the findings and therefore not sufficiently considered?
- 4.) Is it the City's intention to create an exemption from the general rule that any development must comply with the rules and regulations in force and effect at the time approval is sought absent some other legally vested rights?

ANALYSIS

1. The Interpretation Is Inconsistent With Good Planning Practices

a. Inconsistent With Standard Land Use Practices

In the normal course, development of a raw piece of land involves the creation of the lot through the subdivision process, then compliance with the applicable zoning which may require a conditional use or variance or occasional zone change, and lastly one or a series of building permits. At each of these levels, the City has an opportunity to review the proposed development based upon the type of information necessary to evaluate the grant requested. Thus the information required in the application, the criteria or law to be considered and the analyst's evaluation as to whether to grant the request differs for each of these levels.

The Interpretation completely disregards the normal land use planning practice of tiered analysis in its holding that prior subdivision approval with sufficient consideration of the "spirit and intent" of the Parkway results in an exemption from subsequent review of a building permit. Under the Interpretation, the City never gets its chance to evaluate the unique issues presented by the individual building site or by the building itself even as to compliance with the "spirit and intent of the Parkway, not to mention compliance with the intervening Specific Plan. The Interpretation assumes that that determination was made sufficiently based on the information provided and the criteria or law to be considered in granting the subdivision. Such an assumption is inconsistent with the normal policies and practices of good land use planning. It is unreasonable to conclude the Counsel intended to waive its right to proceed with the good planning practice of a normal tiered analysis.

b. Disparate Results

Whether or not intended, the Interpretation will create disparate and unfair results. For an example, take two adjacent lots, zoned RE-40-1-H situated in a tract approved in the 1980's. One lot is vacant and the other one has a small house constructed on it. Assume that there was some consideration given to the Mulholland Parkway by the Advisory Agency in approving the tract. The owner of the vacant lot applies for a building permit to build a house and under the Interpretation, a determination is made that the development is exempt because during the creation of the tract the Advisory Agency took into account the "spirit and intent" of the Report. The development involves considerable grading and proposes a forty-five foot roof including a roof deck to enjoy the great view of the City and solar water heating equipment to heat the pool.

Simultaneously, the homeowner of the already developed adjacent lot applies to add 1012 square feet. Based on the Interpretation, the development on the vacant lot could penetrate the Mulholland Parkway viewshed protections; exceed the fifteen-foot (15') height limitation in the Inner Corridor or the 40' height limitation in the Outer Corridor; and exceed the grading limitations regardless of proximity to parkland or a

stream; and not be required to submit to the Design Review Board for review. However, the proposed 1012-square-foot-development next door would be required to submit to the DRB and comply with all of the rules and regulations set forth therein. This is one example of the type of disparate result which could occur if the Interpretation is adopted as the City's policy regarding the 3(D) exemption. Institutionalizing a policy which clearly will lead to disparate results is inconsistent with the normal practices and policies of land use planning and should not be countenanced.

c. Irrational Application Of Existing Policies

The general rule applicable to any development holds that any project is subject to the rules and regulations in effect at the time an application is deemed complete. Exceptions to this rule have been created by state statute and case law known as vested rights. The Interpretation suggests a partial vested right, ie., a vested right as to the provisions of the Specific Plan. It is implausible that the Interpretation intends to imply the creation of full vested rights regarding subsequently adopted rules and regulations such as down zoning, Hillside Ordinance, Big House Ordinance, Slope Density Ordinance to name a few. The notion of a vested right as to some but not all rules and regulations applicable to a given piece of property creates an irrational interpretation and application of the land use policies for a project.

d. No Investment Backed Expectations Being Taken

The Report of the Citizens' Advisory Committee On The Mulholland Scenic Parkway was adopted on October 6, 1971. It contemplated additional legislation to implement its goals and policies. Unfortunately 20 years was required to enact this legislation. However, no land owner within the Corridors of the Mulholland Scenic Parkway can seriously argue that the adoption of the Specific Plan deprived them of their investment backed expectations by the imposition of new and stricter standards to implement the goals and policies of the Report. The Report imparted clear notice that as a mere policy statement, specific standards and design criteria would be required to implement its intentions.

There is nothing in the Report regarding limited grading near parkland or streams. There is nothing in the Report regarding roof materials, house color, nor are there any specific criteria, standards or limitations of any sort stated in the Report. In light of the absence of such standards or criteria, the tools available for review by Citizens' Advisory Committee were severely limited. In those instances when the CAC found a subdivision to be consistent with the "spirit and intent" of the Parkway, they did not contemplate that this determination was made for all time and for all purposes because specific legislation was always contemplated. The Interpretation essentially changes the rules by negating the expectation on the part of landowners and the CAC that there would be further clarifying legislation. This results in a never intended windfall to the landowners.

e. Waiver Of Right To Consider Changes In Law Or Circumstances

Also because legislation was always contemplated, there can be no argument that the City intended to waive its right to apply new standards based on changes in the law or changes in the factual circumstances applicable to any given project. For a hypothetical example, an upscale subdivision may have been reviewed and blessed by the CAC based on 6,000 square foot houses with a 35 foot height limitation based on a RE-15 Zone designation. During the intervening years, AB283 resulted in a down zoning of the property to the RE-40 Zone allowing a 45-foot height limitation and smaller side yards by the strict application of the code. Moreover, the notion of a large house has dramatically changed such that 6,000 square feet is no longer considered a large house. Does the Department seriously contend that the CAC's prior finding of consistency is binding on the City despite a set of circumstances which are no longer applicable and which radically alter what would be allowable on the site?

f. Inconsistent With Past Interpretations Of The DRB's Scope Of Review

Until very recently, the Department has taken the position that notwithstanding the language in the Specific Plan which specifically grants to the DRB comment authority over design, site layout and grading aspects of a subdivision, the Department has limited the DRB's scope of review since its inception in 1992, to exclude subdivision review. Now, the Interpretation suggests that based on the review by the DRB's predecessor of a subdivision, which review had no authority whatsoever, new building permits cannot now be reviewed.

Although efforts are currently underway to involve the DRB in subdivision review, the combination of the Department's past policy to exclude the DRB from subdivision review, despite the clear protests of the DRB, together with the present Interpretation make clear the Department's hostility to the role of the DRB in enforcement of the provisions of the Specific Plan. No City agency is better able to evaluate whether any aspect of a development, including a building permit, complies with the Specific Plan. The Department appears to be intent on depriving the City of this expertise at every available opportunity.

2. Legislative Intent

The Department's Interpretation creates a vested right where none was ever intended. The Department's Interpretation suggests that the Counsel intended to create vested rights for all lots within subdivisions which received adequate consideration of the "spirit and intent" of the Parkway. If it was the Counsel's intent to create the very valuable property right provided by a vested right, it would have done so unambiguously and not by implication or tortured construction of the ordinance.

The arguments stated above regarding the failure of the Interpretation to comport with sound land use policies and practices require the conclusion that the Council never intended an interpretation similar to that submitted by the Department. Conversely, it may be presumed that the Council assumed the Specific Plan would be implemented in accordance with sound land use policies including tiered review, even handed results, rational application of all of the City's land use policies, full enforcement of any implementing legislation, and the absence of any waiver of a right to implement changes in policies based on changes in the law or circumstances.

The ambiguity in the 3(D) exemption which the Interpretation seeks to clarify is what is meant by **"any project"** found in the first line of the exemption. The interpretation which most closely conforms to the whole of the Specific Plan is that **"any project"** only means **as to that project**, there can be no further review. Thus, a subdivision which is still valid at the time an application for a building permit is filed remains a valid **project** notwithstanding the intervening adoption of the Specific Plan.

This simply means that the development privileges (a legal lot) created as part of a subdivision lawfully created in accordance with the rules and regulations applicable at the time that **project** (subdivision) was approved, remain even if those privileges (a legal lot) could not be created today in accordance with the rules and regulations now existing. The attempt in the Interpretation to muddy the water by expanding the definition of **"any project"** to include subsequent different projects (a building permit in addition to the creation of a lot) is not a fair or reasonable reading of the exemption, or of the Specific Plan taken as a whole.

CONCLUSION

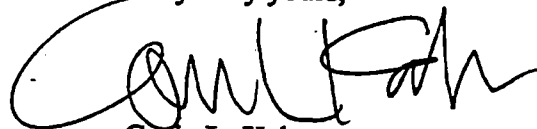
The Department's erroneous Interpretation regarding the 3(D) exemption dated May 7, 1998, is contradictory to law. An application for a building permit is a separate action by the City and where no building permit had been granted by the City before the adoption of the Specific Plan, it is a new "project" as defined by the Specific Plan which must now comply with all of its provisions. The 3(D) exemption does not create any vested rights to a building permit not yet issued. Although any given tract approval may

John Diaz, Chairman
and Members of the Design Review Board
May 21, 1998
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have been "grandfathered" as a tract, an as yet unissued building permit within an approved tract is not entitled to an automatic grandfathering pursuant to the Specific Plan.

If you have any questions, do not hesitate to call.

Very truly yours,



Corin L. Kahn

cc: Hon. Councilmember Michael Feuer, Fifth District
Hon. Councilmember Cindy Miscikowski, Eleventh District
Dr. & Mrs. Niles Chapman
Mr. Jack C. Sedwick, City Planner
Mr. Steven Kim, City Planner
Mulholland Tomorrow

Exhibit "C" - Appeal by Mulholland Tomorrow and All Attachments to CPC

CITY OF LOS ANGELES
PLANNING DEPARTMENT

MASTER APPEAL FORM

APPEAL TO THE: CITY PLANNING COMMISSIONREGARDING CASE NO.: MAY 7, 1998, DIRECTOR'S INTERPRETATION OF
SECTION 3.0, MULHOLLAND SCENIC PARKWAY SPECIFIC
PLAN

This application is to be used for any authorized appeals of discretionary actions by the Planning Department. Appeals must be delivered in person with the following information filled out and be in accordance with the Municipal Code. A copy of the action being appealed must be included. If the appellant is the original applicant, a copy of the receipt must also be included.

APPELLANT INFORMATION: PLEASE PRINT CLEARLY

Name MULHOLLAND TOMORROW
Mailing Address C/O BARRY READ, 210 CARRIAGE PLACE
MANHATTAN BEACH, CA Zip: 90266

Work Phone: (310) 318-2777 Home Phone () _____

- a) Are you or do you represent the original applicant?
(Circle One) YES ☒ NO
- b) Are you filing to support the original applicant's position?
(Circle One) YES ☒ NO
- c) Are you filing for yourself or on behalf of other parties, an organization or company? (Circle One) SELF ☒ OTHER
- d) If "other" please state the name of the person(s), organization or company (print clearly or type)
MULHOLLAND TOMORROW

REPRESENTATIVE

Name BARRY READ, EXECUTIVE DIRECTOR
Mailing Address 210 CARRIAGE PLACE
MANHATTAN BEACH, CA Zip 90266

Work Phone: (310) 318-2777 Home Phone: () _____

APPEAL INFORMATION

A complete copy of the decision letter is necessary to determine the final date to appeal, under what authorizing legislation, and what, if any, additional materials are needed to file the appeal.

Final Date to Appeal:

MAY 27, 1998

Authorizing Legislation

PURSUANT TO DIRECTOR'S INTERPRETATION OF
MAY 7, 1998

REASONS FOR APPEALING

Are you appealing the entire decision or parts of it?



Entire



Part

Indicate: 1) How you are aggrieved by the decision; and 2) Why do you believe the decision-maker erred or abused their discretion? If you are not appealing the whole determination, please explain and specifically identify which part of the determination you are appealing.

Attach additional sheets if necessary.

SEE ATTACHED**ADDITIONAL INFORMATION**

- original applicants must pay mailing fees to BTC and submit copy of receipt.
(BTC not required for Building and Safety Appeals)
- any additional information or materials required for filing an appeal must be provided in accordance with the LAMC regulations as specified in the original determination letter. Copy of determination/decision letter required.
- acceptance of a complete and timely appeal is based upon successful completion and examination of all the required information.
- if appeal is to the Board of Zoning Appeals six copies are required.

I certify that the statements contained in this application are complete and true:

Appellant

Wann Pearl**OFFICIAL USE ONLY**

Receipt No.

210802

Amount

64+7=71

Date

5/27/98

Application Received By

[Signature]

Application Deemed Complete

[Signature]

Copies provided:



Determination



Receipt (original applicant only)

Determination Authority Notified (if necessary)



APPEAL TO THE CITY PLANNING COMMISSION

REGARDING THE MAY 7 DIRECTOR'S INTERPRETATION OF SECTION 3.D., MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN

REASONS FOR APPEALING

Mulholland Tomorrow is a non-profit organization of property-owners, homeowners, and others who are concerned with the preservation of the scenic and environmental characteristics of the Mulholland Scenic Parkway. Mulholland Tomorrow supports the full implementation of the Mulholland Scenic Parkway Specific Plan.

The Deputy Director of the Department of City Planning has stated, in comments before the Mulholland Scenic Parkway Design Review Board, that this interpretation of Section 3.D. will result in the approval and construction of development projects in the Mulholland Scenic Corridor that do not conform to the Specific Plan. As a consequence, this interpretation will adversely affect the scenic and environmental characteristics of the Mulholland Scenic Parkway, and thwart the full implementation of the Specific Plan, all to the detriment of the members and supporters of Mulholland Tomorrow who are property-owners and homeowners along the Mulholland Scenic Corridor, and citizens of the City of Los Angeles who use and enjoy the Parkway.

The Director's interpretation of Section 3.D. of the Specific Plan is erroneous in two respects. First, the Director interprets the Section 3.D. exemption in a manner that is inconsistent with the purposes and the language of the Specific Plan as a whole. Second, the Director's interpretation ignores the core issue, which is the meaning of the term "project," as used in Section 3.D.

The first error made by the Director's interpretation is really very simple. Any interpretation of an ordinance by a City department should be consistent with the City Council's stated purpose for adopting that ordinance. Any interpretation of an ordinance that is inconsistent with that purpose is erroneous. The interpretation of specific provisions of an ordinance cannot stand apart or in contradiction to the purposes of the ordinance as a whole. Therefore, if the language of a provision of the Specific Plan requires interpretation, that interpretation should resolve any ambiguity in a manner that is consistent with the City Council's purpose and intent in adopting the Specific Plan. Any interpretation that is inconsistent with the City Council's stated intent is erroneous.

The City Council's first purpose in adopting the Specific Plan, as stated in Section 2.A. of the Plan, was "to assure maximum preservation and enhancement of the parkway's outstanding and unique scenic features and resources." Any interpretation by the Director of particular provisions of the Specific Plan should be

consistent with this stated purpose. The interpretation at issue in this appeal is not consistent with this purpose because -- according to the Deputy Director -- it will result in development projects being built along the Mulholland Scenic Parkway that do not have to comply with the provisions of the Specific Plan and do not have to be reviewed by the Mulholland Scenic Parkway Design Review Board. Therefore, this interpretation does not assure maximum preservation and enhancement of the parkway's outstanding and unique scenic features and resources. The Director's interpretation is inconsistent with the purposes of the Specific Plan, and, therefore, the Director's interpretation is erroneous.

The inconsistency between the language of the Specific Plan and this Director's interpretation becomes even clearer in light of Section 2.O. of the Specific Plan, which states that one purpose of the Specific Plan is:

To provide a review process of all projects which are visible from Mulholland Drive to assure their conformance to the purposes and development standards contained in the Specific Plan and the Landform Grading Manual.

The Director's interpretation of the Specific Plan, which would allow projects that are visible from Mulholland Drive to circumvent the purposes and development standards in the Specific Plan, is not consistent with the purposes of the Specific Plan. Therefore, the Director's interpretation is erroneous.

The second error made by the Director's interpretation of Section 3.D. is that it starts in the wrong place. Section 3.D. of the Specific Plan states:

The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals submitted by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, specific plan exemption, conditional use, variance, tract map, parcel map, project permits pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code. (emphasis supplied)

The exemption created by this section applies to projects, and it is the meaning of this term that is the starting point for interpreting the exemption. The Director's interpretation does not address this threshold question, and therefore reaches an erroneous conclusion.

The definition of the term "project" in Section 4 of the Specific Plan reads, in relevant part, as follows:

Project: The construction of any building or structure, or the addition to, alteration, conversion, or change of use of any land, building or structure on a lot located in whole or in part within the Specific Plan Area...

This definition is sufficiently broad to encompass an interpretation that each step in the process of approving a development proposal is a separate "project" under the Specific Plan. This is also a logical interpretation of this definition because each step in the approval process -- for instance, approval of a zone change or a tract map, or issuance of a building permit -- is characterized by different issues, distinct facts, and disparate outcomes.

The Section 3.D. exemption is meaningful only if each approval in the development process is interpreted as a distinct project. Under this interpretation, the developer of a building or structure who has applied for and received a discretionary approval (as described in Section 3.D.) prior to the adoption of the Specific Plan, does not have to repeat that process under the Specific Plan. Applications for discretionary approvals submitted after the effective date of the Specific Plan, however, are separate "projects" and, therefore, are not exempt under the Specific Plan. These subsequent applications raise issues and concerns that were not previously considered.

This interpretation of the Section 3.D. exemption is also consistent with the stated purpose of the Specific Plan. Under this interpretation, each application for approval of a project, or each application for a building permit submitted after the effective date of the Specific Plan would be subject to review under the Plan. The Section 3.D. exemption, however, would effectively protect property-owners and -developers by preventing the City from taking the proverbial "second bite of the apple" by requiring reconsideration of approvals previously issued. As a result, the purposes of the Specific Plan will be realized -- the Parkway's unique and outstanding scenic features and resources will be assured maximum protection and enhancement, and all projects that are visible from Mulholland Drive will be subject to a review process to assure their conformance to the purposes and development standards in the Specific Plan.

The Director's interpretation does not address the meaning of the term "project," in spite of the central relevance of this term to the Section 3.D. exemption. Instead, the Director's interpretation appears to focus on avoiding duplicate reviews of the same project. As pointed out above, interpreting the term "project" to apply to each approval required of a development proposal avoids significant duplication by exempting projects from having to go through the same approval twice, before and after the adoption of the Specific Plan. The approach to preventing duplication in the Director's interpretation, however, is to recognize an exemption only when the "spirit and intent of the Mulholland Scenic Parkway Report" was considered in reviewing the application. This approach raises more issues than it resolves.

First, there is no section of the Report of the Citizen's Advisory Committee on the Mulholland Scenic Parkway that specifies the "spirit and intent" of the report. The "spirit and intent" are presumably to be the subject of guidelines by the Director. In the absence of those guidelines, it is impossible to know what this Director's interpretation exempts or includes, or whether it is consistent with the Specific Plan.

Second, the "Concepts and Principles" section of the Report contains general descriptions of the intended Parkway, but only one statement concerning development: "Mulholland Parkway's scenic value shall be **protected by adoption of scenic corridors** with criteria and zoning standards related to the parkway concept" (emphasis in the original). This statement is an inadequate basis for determining whether the consideration of an application followed the "spirit and intent" of the Report.

Third, by exempting applications from review under the Specific Plan if previous applications for the same development were approved prior to the adoption of the Specific Plan, the Director's interpretation creates an exception to the general rule that any application for a permit or license from a public body must be evaluated under the statutes and regulations in effect at the time the application is submitted. The Director's interpretation creates a vested right that is not recognized elsewhere in City ordinances or regulations. In no other areas -- building codes, zoning ordinances, conditional use requirements -- does approval of a tract map "freeze" other requirements in place, exempting subsequent applications exempt from changes in applicable ordinances and regulations adopted.

Because the Director's interpretation is inconsistent with the Specific Plan, and because the Director's interpretation does not address the central issue, is premised on vague and undefined notions of the "spirit" of the Mulholland Report, and creates unprecedented vested rights for development proposals, the Director's interpretation is erroneous.

This appeal also endorses and incorporates, as though set forth in full, the statements made in the following documents (attached as exhibits to this appeal) to the extent that they are not inconsistent with the statements and arguments made herein:

1. Corin Kahn's letter of November 4, 1997, to Hon. Councilmember Michael Feuer, Re: 11979 Pinnacle Place; Lot 23, Tract 29033; Erroneous Determination Of Exemption From Mulholland Scenic Parkway Specific Plan and Big House Ordinance.
2. Barry Read's letter of January 26, 1998, to Hon. Councilmember Michael Feuer, Re: 11979 Pinnacle Place; Lot 23, Tract 29033; Erroneous Determination Of Exemption From Mulholland Scenic Parkway Specific

Plan and Big House Ordinance.

3. Corin Kahn's letter of March 18, 1998, to Mr. John Diaz, Chairperson, Re: Erroneous Interpretation Of Exemption 3(D) Regarding Mulholland Scenic Parkway Specific Plan; Proposed Resolution.
4. Corin Kahn's letter of May 21, 1998, to Mr. John Diaz, Chairperson, Re: Objections to Director's Interpretation of 3(D) Exemption Regarding Mulholland Scenic Parkway Specific Plan.

**CITY OF LOS ANGELES
CALIFORNIA**



**RICHARD J. RIORDAN
MAYOR**

May 7, 1998

**DEPARTMENT OF
CITY PLANNING
221 N. FIGUEROA STREET
LOS ANGELES, CA 90012-2601**

**CITY PLANNING
COMMISSION**

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PRESIDENT**

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All Interested Parties:

**INTERPRETATION OF SECTION 3.D., WHICH EXEMPTS PROJECTS THAT HAVE
SECURED DISCRETIONARY APPROVAL ON OR BEFORE THE EFFECTIVE DATE OF THE
MULHOLLAND SCENIC PARKWAY DESIGN REVIEW BOARD AND FROM THE
PROVISIONS OF THE SPECIFIC PLAN**

Attached is a copy of the Department of City Planning's interpretation of Section 3.D. of Ordinance Number 167,943, which established the Specific Plan for the Mulholland Scenic Parkway. This published interpretation becomes final and effective 20-days from the date of this communication unless an appeal to the City Planning Commission is filed within this time period. Appeals shall be filed in duplicate on forms provided at any of the following public offices of the Department of City Planning, along with the required filing fee:

**Planning Department - Public Counter
201 North Figueroa Street, 3rd Floor
Los Angeles, CA 90012
Phone: (213) 977-6083**

**San Fernando Valley Office
6251 Van Nuys Boulevard
Van Nuys, CA 91401
Phone: (818) 756-8596**

If you have any questions regarding this case, please contact Jack Sedwick at (213) 485-6354 or Steve Kim at (818) 756-9172.

Sincerely,

**CON HOWE
Director of Planning**

**ROBERT H. SUTTON
Deputy Director**

Attachment

**cc: Councilmember Joel Wachs, CD #2
Councilmember John Ferraro, CD #4
Councilmember Michael Feuer, CD #5
Councilmember Cindy Miscikowski, CD #11
John A. Diaz, Chairman, Mulholland Scenic Parkway Design Review Board
Mulholland Scenic Parkway Design Review Board Members
Richard Holguin, Building and Safety Department
Robert Janovici, Department of City Planning
Gordon Murley, Federation of Hillside and Canyon Property Owners
Corin L. Kahn, Esq.**

**PUBLIC COUNTER & CONSTRUCTION SERVICES CENTER
CITY HALL - 200 N. SPRING STREET, RM. 460S - (213) 485-7826
VAN NUYS - 6251 VAN NUYS BLVD., 1ST FLOOR, VAN NUYS 91401 - (818) 756-8596**

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MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN (ORDINANCE NO. 167,943)

DIRECTOR OF PLANNING SPECIFIC PLAN INTERPRETATION

SUBJECT

INTERPRETATION OF SECTION 3.D., WHICH EXEMPTS PROJECTS THAT HAVE SECURED DISCRETIONARY APPROVAL ON OR BEFORE THE EFFECTIVE DATE OF THE MULHOLLAND SCENIC PARKWAY SPECIFIC PLAN FROM DESIGN REVIEW BY THE MULHOLLAND SCENIC PARKWAY DESIGN REVIEW BOARD, AND FROM THE PROVISIONS OF THE SPECIFIC PLAN.

DISCUSSION

This interpretation is limited to Section 3.D. of the Mulholland Scenic Parkway Specific Plan (MSPSP) ordinance which states:

“The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.”

The question has been raised as to whether the above Section would exempt a project which received any of the listed discretionary approvals at any time prior to the effective date of the Specific Plan, if the approval is still valid at the time of an application for a building permit. For example, would a tract map approval in 1936 which has recorded lots, exempt all future building construction on those lots from the provisions of the MSPSP?

Our review of the City Council's findings is that the intent of this section in the Specific Plan was to avoid duplicate reviews for the same project. The City Council included in its findings, Finding #5 which states:

5. Section 3D (Specific Plan Application) “Projects which have received discretionary approval before the effective date of this Specific Plan and such approval is still valid at the time an application for a building permit is filed and in that process were subject to a public hearing are exempt from the provisions of the Specific Plan. These discretionary approvals include change of zone, height district change, specific plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to an interim control ordinance, coastal development permit or Zoning Administrator approval pursuant to Section 12.27 of the Code. This provision is provided

since there is no intent to duplicate other project review processes. The Citizen's Advisory Committee for the Mulholland Scenic Parkway has been reviewing proposed project since approximately 1982 within the Specific Plan area to insure that they conform to the spirit and intent of the report of the Citizen's Advisory Committee on the Mulholland Scenic Parkway, and since subdivisions and parcel map applications have been subject to the LAMC Section 17.05S, Mulholland Scenic Parkway, such projects have already been reviewed as to their conformity with the intent of the Mulholland Scenic Parkway and therefore do not require further review."

The Mulholland Scenic Parkway has provisions requiring conformance with the spirit and intent of the Report of the Citizens' Advisory Committee on the Mulholland Scenic Parkway as adopted by the City Council March 26, 1973. Additionally, effective October 3, 1974, it became the duty of the Advisory Agency to interpret and apply standards to tract and parcel map applications that were subject to the LAMC Division of Land Section 17.05S. Between 1982 and the effective date of the MSPSP (June 29, 1992), a Citizen Advisory Committee was appointed to review projects in the Plan area. The Committee's review was to ensure that proposed projects conformed to the spirit and intent of their "Mulholland Scenic Parkway Report" (the "Green Book"), which later became the Design Development Manual.

Since the 1992 effective date of the Specific Plan, all projects (other than those with exemptions) have been subject to design review by the Board and to the provisions of the Specific Plan, including those projects that received new discretionary approvals after 1992.

Section 3.D. of the Specific Plan exempts projects that were by application, subject to a public hearing and secured discretionary approval on or before the effective date of this Specific Plan, if such approval is still valid at the time an application for a building permit is filed. Based on the review of the findings of the City Council's action in adopting the MSPSP, the intent of this section is to prevent the duplication of other project review processes. Discretionary approvals considered between April 24, 1982 and June 29, 1992 should have been reviewed by the Citizen Advisory Committee. Subdivisions and parcel map applications have been subject to the LAMC Section 17.05S since October 3, 1974.

INTERPRETATION

Section 3.D. of the MSPSP is hereby interpreted to exempt projects that filed an application, were subject to a public hearing and received one of the listed discretionary approvals, if such discretionary approval had Citizen Advisory Committee review of the project or explicit City Planning Commission, Director, Advisory Agency or Zoning Administrator findings and approval of the same. Only those projects that received such discretionary approval, which considered the spirit and intent of the Mulholland Scenic Parkway Report, would be considered to be exempt from the provisions of the Specific Plan and design review by the Board.

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November 4, 1997

Hon. Councilmember Michael Feuer
Councilman, 5th Council District
Los Angeles City Council
Room 237
City Hall
200 North Spring Street
Los Angeles, CA 90012

**RE: 11979 Pinnacle Place; Lot 23, Tract 29033; Erroneous
Determination Of Exemption From Mulholland Scenic Parkway
Specific Plan and Big House Ordinance**

Dear Hon. Councilmember Feuer:

This office was recently retained to represent Dr. and Mrs. Niles Chapman, owners of the real property located at 11975 Pinnacle Place, in the Sherman Oaks area, immediately next door to 11979 Pinnacle Place ("Subject Property"), the subject of this dispute, which is owned by Groman Mortuaries ("Groman"). We are informed that Groman intends to develop the Subject Property with an approximately 12,000 square foot single family home (the "Project") without complying with the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943, adopted by the City Council on May 13, 1992) (the "Specific Plan") or the Big House Ordinance (Ordinance No. 169,775, adopted by the City Council on April 26, 1994) based on erroneous interpretations by the Department of City Planning (the "Department") that exemptions to the Specific Plan and Big House Ordinance are available to Groman.

SUMMARY

The Department's interpretations regarding the application of these alleged exemptions is erroneous and contradictory to law. With respect to the Specific Plan, an application for a building permit is a separate action by the City and therefore it is a new

Councilman Michael Feuer
November 4, 1997
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"project" as defined by the Specific Plan. Whereas the tract approval may have been "grandfathered", an as yet unissued building permit does not enjoy this privilege.

With respect to the Big House Ordinance, a project located in the Hillside Area which might otherwise claim an exemption under LAMC 12.21 A 17 (i) (2) ("the fully improved street" exemption) should be treated as being not located in the Hillside Area and instead subject to LAMC Sections 12.07.01 C 2 (a - c) which require a ten foot (10') side yard setback plus an additional one foot (1') for each increment of ten feet or fraction thereof above the first 18 feet of height of the main building. The elimination of the exemptions from the Big House Ordinance is reinforced in this case by the substandard lot size within the zone.

We respectfully request that you immediately institute the necessary procedures to monitor any permit activity for 11979 Pinnacle Place, the Subject Property, so that these and other related issues can be properly discussed and resolved before any permit is issued.

FACTUAL BACKGROUND

The Subject Property is an undeveloped unimproved parcel located within the Outer Corridor as defined in the Specific Plan, legally described as Lot 23 of Tract 29033 (the "Tract"), and is part of the development known as the Summit Above Beverly Hills. The application for the Tract was filed on July 29, 1975, which was approved on February 5, 1980. Significantly, the Tract was not filed as a vesting tract map pursuant to *Government Code* Section 66498.1. Since the approval of the Tract, the City enacted the Specific Plan, however, the goals and policies of the Report Of The Citizens' Advisory Committee On The Mulholland Scenic Parkway have been in effect since its adoption by the City Council on October 1971, as implemented by the Citizens Advisory Committee ("CAC"). Also since the approval of the Tract, the City adopted the "Big House" Ordinance.

The Subject Property is 22,134 square feet, a substandard nonconforming irregularly shaped lot in the RE40-1-H zone. The zoning at the time of the subdivision was RE-15, which subsequently was down zoned as part of the Citywide AB 283 zoning roll back to achieve zoning consistency. The Applicants have applied for and been granted two variances, a yard variance (ZA 96-1046YV) and a slight modification (ZA 96-0147SM) which they are presently declining to use. A new design, which Groman argues requires no variance, was presented to the Architectural Review Board for the Home Owners Association for the Summit on October 15, 1997. The new Project has eleven foot (11') side yard setbacks, is three (3) stories and is thirty-nine feet (39') in height except that on its north side the total height from grade is considerably higher.

We are informed that the Applicant has elected not to proceed with the form of the Project requiring the two variances because, *inter alia*, the Department has taken the

Councilman Michael Feuer
November 4, 1997
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position that Groman's application for a building permit is exempt based on Section 3(D) of the Specific Plan because it is located within a tract which received approval before the Specific Plan was enacted.

ANALYSIS

There is nothing in the record which would support the position that the Project is entitled to an exemption under the Specific Plan or the Big House Ordinance nor are there any vested rights to build the Project. Consequently, the Project, here a building permit, is subject to all of the rules and regulations in effect on the date it is approved. While it is conceded that the recordation of the Tract enables Groman to build a single family on the Subject Property despite the nonconformity of the lot with today's zoning requirements, at issue here is what rules and regulations are applicable to the Project.

The Specific Plan

The Specific Plan defines Project as:

the construction of any building or structure, or the addition to, alteration, conversion, or change of use of any land, building, or structure on a lot located in whole or in part within the Specific Plan Area;

The application to the City for any permit required to build a home, including a building permit, or grading permit, is a "project" as that term is defined in the Specific Plan.

The application which created the Tract, also would have constituted a "project" within this definition had the Specific Plan been in effect at the time of its approval. Instead, however, the Tract was subject to the provisions of the Report Of The Citizens' Advisory Committee On The Mulholland Scenic Parkway, the precedent to the Specific Plan. However, the definition of "project" is sufficiently broad that each step of approval required for the development under a permit raises separate issues and thus is considered a separate "project" under the Code. Absent vesting, the general rule is that each such permit is governed by the rules in effect at the time it is issued.

There is nothing in the file or in the legislative history of the Specific Plan which would support an argument that Groman has any rights to build the Project without complying with the Specific Plan. Section 3 (D) of the Specific Plan, relied on by the Department, states:

The provisions of this Specific Plan shall not apply to any project where one or more of the following discretionary approvals initiated by application of the property owners or their representatives, and subject to a public hearing, was granted on or before the effective date of this Specific Plan and is still valid at the time an application for a building permit is filed: zone change, height district change, Specific Plan exception, conditional use, variance, tract map, parcel map, project permit pursuant to

Councilman Michael Feuer
November 4, 1997
Page 4

an interim control ordinance, coastal development permit or zoning administrator approval pursuant to Section 12.27 of the Code.

The Department obviously is interpreting this exemption too broadly. Utilizing the first tool of legislative construction, the "plain meaning" of the language, the section simply states that if you received an earlier approval, that earlier approval, and only that approval remains valid until you pull a building permit or it lapses, which ever occurs first. Had the City Council intended to exempt building permits, it could simply have stated that any building permit was exempt when an earlier discretionary approval had been received. Instead, the reference to building permits in the exemption language is in the context of the **timing** in which the previously granted discretionary approval remains in effect. Here, the language states that **at the time** you are ready to pull a building permit, if your previously granted discretionary approval is still valid, then notwithstanding the subsequent approval of the Specific Plan that previously granted discretionary approval is valid. This is standard language since it is perceived that it would be unfair to subject a project to a "second bite at the apple".¹ Here, however, there is no second bite since the issues pertaining to the issuance of the building permit have never been examined by the governing review authority, i.e., CAC, DRB, or the City.

Nothing stated in Section 3(D) suggests the intention to create a blanket exemption for subsequent "projects", such as a building permit, without it first complying with subsequently enacted rules and regulations. Exemptions such as this one must be construed narrowly.²

The Department's interpretation of this exemption also is not supported by common sense because it would mean that the Specific Plan eliminated what, up until then, had been the long-standing requirement of review by the Mulholland CAC before a building permit could be obtained. Building permit review was required before the Specific Plan was enacted and the Specific Plan merely shifted review authority to the Design Review Board. It did not carve away review authority of any projects within the Specific Plan including building permits. Consequently, if review of a building permit was required before the Specific Plan was enacted, common sense dictates that it is required after its adoption.

³In discerning legislative intent, the adjudicator must be vigilant to preserve the spirit of the act and to prevent a distortion of it purposes. Clearly, one important purpose

¹ This interpretation is consistent with the common practice that in many instances, legislative acts affecting substantive rights are not retroactively applied.

² The general rule is that where there is specified an exception to the general rule, other exceptions are not to be implied or presumed.

³

SUMMARY

Although the Interpretation will require compliance with the Specific Plan in some instances where an exemptions had previously been granted in error, which we support and applaud, the Interpretation does not address the fundamental objection raised by this office in its November 4th letter regarding the Department's erroneous interpretation of the 3(D) exemption. That objection was as follows:

Because a building permit is a separate project under the Specific Plan, it must comply with the Specific Plan regardless of any earlier discretionary approvals which may have been granted for the site prior to the adoption of the Specific Plan.

We disagree with the Interpretation and request a clarification to it which clearly states that a building permit is a separate project which must comply with the Specific Plan unless that building permit was granted previous to the adoption of the Specific Plan or some legally created vested rights were perfected by means other than the 3(D) exemption. In addition, we also wish to observe the following problems with the Interpretation:

- 1.) The Interpretation does not address the Department's erroneous contention, notwithstanding the language in the Specific Plan to the contrary, that a building permit is not a project.
- 2.) The Interpretation creates an ambiguous standard to the extent it requires a determination of whether the project received consideration of the "spirit and intent" of the Parkway and fails to state any clear procedure for making that determination, ie., is this determination made by the Department or by the Board?
- 3.) Does the Interpretation mean by its requirement of explicit Planning Commission, Director, Advisory Agency or Zoning Administrator findings and approval, explicit findings of consistency with the policies and goals of the Mulholland Scenic Parkway Report and which goals and policies of the Report must have been considered? Or does the project go to DRB for partial review for all of those issue not specifically addressed in the findings and therefore not sufficiently considered?
- 4.) Is it the City's intention to create an exemption from the general rule that any development must comply with the rules and regulations in force and effect at the time approval is sought absent some other legally vested rights?

ANALYSIS

1. The Interpretation Is Inconsistent With Good Planning Practices

a. Inconsistent With Standard Land Use Practices

In the normal course, development of a raw piece of land involves the creation of the lot through the subdivision process, then compliance with the applicable zoning which may require a conditional use or variance or occasional zone change, and lastly one or a series of building permits. At each of these levels, the City has an opportunity to review the proposed development based upon the type of information necessary to evaluate the grant requested. Thus the information required in the application, the criteria or law to be considered and the analyst's evaluation as to whether to grant the request differs for each of these levels.

The Interpretation completely disregards the normal land use planning practice of tiered analysis in its holding that prior subdivision approval with sufficient consideration of the "spirit and intent" of the Parkway results in an exemption from subsequent review of a building permit. Under the Interpretation, the City never gets its chance to evaluate the unique issues presented by the individual building site or by the building itself even as to compliance with the "spirit and intent of the Parkway, not to mention compliance with the intervening Specific Plan. The Interpretation assumes that that determination was made sufficiently based on the information provided and the criteria or law to be considered in granting the subdivision. Such an assumption is inconsistent with the normal policies and practices of good land use planning. It is unreasonable to conclude the Counsel intended to waive its right to proceed with the good planning practice of a normal tiered analysis.

b. Disparate Results

Whether or not intended, the Interpretation will create disparate and unfair results. For an example, take two adjacent lots, zoned RE-40-1-H situated in a tract approved in the 1980's. One lot is vacant and the other one has a small house constructed on it. Assume that there was some consideration given to the Mulholland Parkway by the Advisory Agency in approving the tract. The owner of the vacant lot applies for a building permit to build a house and under the Interpretation, a determination is made that the development is exempt because during the creation of the tract the Advisory Agency took into account the "spirit and intent" of the Report. The development involves considerable grading and proposes a forty-five foot roof including a roof deck to enjoy the great view of the City and solar water heating equipment to heat the pool.

Simultaneously, the homeowner of the already developed adjacent lot applies to add 1012 square feet. Based on the Interpretation, the development on the vacant lot could penetrate the Mulholland Parkway viewshed protections; exceed the fifteen-foot (15') height limitation in the Inner Corridor or the 40' height limitation in the Outer Corridor; and exceed the grading limitations regardless of proximity to parkland or a

stream; and not be required to submit to the Design Review Board for review. However, the proposed 1012-square-foot-development next door would be required to submit to the DRB and comply with all of the rules and regulations set forth therein. This is one example of the type of disparate result which could occur if the Interpretation is adopted as the City's policy regarding the 3(D) exemption. Institutionalizing a policy which clearly will lead to disparate results is inconsistent with the normal practices and policies of land use planning and should not be countenanced.

c. Irrational Application Of Existing Policies

The general rule applicable to any development holds that any project is subject to the rules and regulations in effect at the time an application is deemed complete. Exceptions to this rule have been created by state statute and case law known as vested rights. The Interpretation suggests a partial vested right, ie., a vested right as to the provisions of the Specific Plan. It is implausible that the Interpretation intends to imply the creation of full vested rights regarding subsequently adopted rules and regulations such as down zoning, Hillside Ordinance, Big House Ordinance, Slope Density Ordinance to name a few. The notion of a vested right as to some but not all rules and regulations applicable to a given piece of property creates an irrational interpretation and application of the land use policies for a project.

d. No Investment Backed Expectations Being Taken

The Report of the Citizens' Advisory Committee On The Mulholland Scenic Parkway was adopted on October 6, 1971. It contemplated additional legislation to implement its goals and policies. Unfortunately 20 years was required to enact this legislation. However, no land owner within the Corridors of the Mulholland Scenic Parkway can seriously argue that the adoption of the Specific Plan deprived them of their investment backed expectations by the imposition of new and stricter standards to implement the goals and policies of the Report. The Report imparted clear notice that as a mere policy statement, specific standards and design criteria would be required to implement its intentions.

There is nothing in the Report regarding limited grading near parkland or streams. There is nothing in the Report regarding roof materials, house color, nor are there any specific criteria, standards or limitations of any sort stated in the Report. In light of the absence of such standards or criteria, the tools available for review by Citizens' Advisory Committee were severely limited. In those instances when the CAC found a subdivision to be consistent with the "spirit and intent" of the Parkway, they did not contemplate that this determination was made for all time and for all purposes because specific legislation was always contemplated. The Interpretation essentially changes the rules by negating the expectation on the part of landowners and the CAC that there would be further clarifying legislation. This results in a never intended windfall to the landowners.

e. Waiver Of Right To Consider Changes In Law Or Circumstances

Also because legislation was always contemplated, there can be no argument that the City intended to waive its right to apply new standards based on changes in the law or changes in the factual circumstances applicable to any given project. For a hypothetical example, an upscale subdivision may have been reviewed and blessed by the CAC based on 6,000 square foot houses with a 35 foot height limitation based on a RE-15 Zone designation. During the intervening years, AB283 resulted in a down zoning of the property to the RE-40 Zone allowing a 45-foot height limitation and smaller side yards by the strict application of the code. Moreover, the notion of a large house has dramatically changed such that 6,000 square feet is no longer considered a large house. Does the Department seriously contend that the CAC's prior finding of consistency is binding on the City despite a set of circumstances which are no longer applicable and which radically alter what would be allowable on the site?

f. Inconsistent With Past Interpretations Of The DRB's Scope Of Review

Until very recently, the Department has taken the position that notwithstanding the language in the Specific Plan which specifically grants to the DRB comment authority over design, site layout and grading aspects of a subdivision, the Department has limited the DRB's scope of review since its inception in 1992, to exclude subdivision review. Now, the Interpretation suggests that based on the review by the DRB's predecessor of a subdivision, which review had no authority whatsoever, new building permits cannot now be reviewed.

Although efforts are currently underway to involve the DRB in subdivision review, the combination of the Department's past policy to exclude the DRB from subdivision review, despite the clear protests of the DRB, together with the present Interpretation make clear the Department's hostility to the role of the DRB in enforcement of the provisions of the Specific Plan. No City agency is better able to evaluate whether any aspect of a development, including a building permit, complies with the Specific Plan. The Department appears to be intent on depriving the City of this expertise at every available opportunity.

2. Legislative Intent

The Department's Interpretation creates a vested right where none was ever intended. The Department's Interpretation suggests that the Counsel intended to create vested rights for all lots within subdivisions which received adequate consideration of the "spirit and intent" of the Parkway. If it was the Counsel's intent to create the very valuable property right provided by a vested right, it would have done so unambiguously and not by implication or tortured construction of the ordinance.

The arguments stated above regarding the failure of the Interpretation to comport with sound land use policies and practices require the conclusion that the Council never intended an interpretation similar to that submitted by the Department. Conversely, it may be presumed that the Council assumed the Specific Plan would be implemented in accordance with sound land use policies including tiered review, even handed results, rational application of all of the City's land use policies, full enforcement of any implementing legislation, and the absence of any waiver of a right to implement changes in policies based on changes in the law or circumstances.

The ambiguity in the 3(D) exemption which the Interpretation seeks to clarify is what is meant by "**any project**" found in the first line of the exemption. The interpretation which most closely conforms to the whole of the Specific Plan is that "**any project**" only means *as to that project*, there can be no further review. Thus, a subdivision which is still valid at the time an application for a building permit is filed remains a valid **project** notwithstanding the intervening adoption of the Specific Plan.

This simply means that the development privileges (a legal lot) created as part of a subdivision lawfully created in accordance with the rules and regulations applicable at the time that **project** (subdivision) was approved, remain even if those privileges (a legal lot) could not be created today in accordance with the rules and regulations now existing. The attempt in the Interpretation to muddy the water by expanding the definition of "**any project**" to include subsequent different projects (a building permit in addition to the creation of a lot) is not a fair or reasonable reading of the exemption, or of the Specific Plan taken as a whole.

CONCLUSION

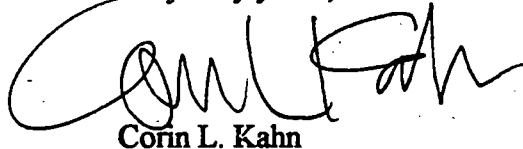
The Department's erroneous Interpretation regarding the 3(D) exemption dated May 7, 1998, is contradictory to law. An application for a building permit is a separate action by the City and where no building permit had been granted by the City before the adoption of the Specific Plan, it is a new "project" as defined by the Specific Plan which must now comply with all of its provisions. The 3(D) exemption does not create any vested rights to a building permit not yet issued. Although any given tract approval may

**John Diaz, Chairman
and Members of the Design Review Board
May 21, 1998
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have been "grandfathered" as a tract, an as yet unissued building permit within an approved tract is not entitled to an automatic grandfathering pursuant to the Specific Plan.

If you have any questions, do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Corin L. Kahn', written over a horizontal line.

Corin L. Kahn

**cc: Hon. Councilmember Michael Feuer, Fifth District
Hon. Councilmember Cindy Miscikowski, Eleventh District
Dr. & Mrs. Niles Chapman
Mr. Jack C. Sedwick, City Planner
Mr. Steven Kim, City Planner
Mulholland Tomorrow**

Councilman Michael Feuer
November 4, 1997
Page 5

of the enactment of the Specific Plan was to tighten control over development within the Specific Plan area.

Furthermore, no specific rights have vested as a matter of law other than the right to build a single-family house on the lot by virtue of the recordation of Tract 29033. The Tract was approved prior to the enactment of the vesting provisions for tract maps set forth at Government Code Section 66498.1 (adopted by the State in 1984, effective January 1, 1986 for residential developments) and nothing else has been done to confer vested status. Even if the City had tried to convey vested rights by the exemption of Section 3(D), which we strongly contend was not the City's intent, such an attempt fails as an unlawful delegation of the City's police power. *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 23, fn 20. Without any vested rights, the general rule requires that the Project must comply with the laws in effect at the time when a building permit is issued. *Hazon-Iny Development, Inc. v. City of Santa Monica* (1982) 128 Cal. App. 3rd 1, 10-11.

In this case, for all of the above-stated reasons, the application for a building permit must comply with the Specific Plan. Although an application has not yet been filed, we have brought this issue to your attention because we are concerned about the erroneous interpretation that the Department has taken with respect to this Project and to other similar building permits involving the same or similar circumstances. We are informed that Groman intends to file for a building permit soon and request that your office monitor all permit activity on the Subject Property so that these issues may be properly considered before any final decision is reached.

The Big House and Hillside Ordinances

We are also informed that the Department is taking the position that the Big House Ordinance does not apply to the proposed Project. This too is an erroneous interpretation of the applicable law. Although the applicable code sections are difficult to reconcile, they have been the subject of a recent ZAI (ZA 96-0241) which helps to clarify the City's intentions with respect to these two provisions. In order to comply with the City's intentions in enacting the Big House and Hillside ordinances the side yard standards require a 13 foot side yard or greater on both sides of the Project.

RE Residential Estate Zone, Sections 12.07.01 C 2 (b) and (c) of the City's Municipal Code (Big House Ordinance, No. 169,775) provides that the side yard in the RE 40 Zone shall be not less than 10 feet on each side of the main building. It also states ambiguously that in certain zones which are not located in the hillside area, if the main building exceeds 18 feet, then the side yard shall be increased one foot for each increment of ten feet or fraction thereof above the first 18 feet above the main building. If the Project were not within the Hillside Area, by application of the Big House Ordinance, the City would require a 13-foot side yard set back assuming a building 39 feet in height.

Councilman Michael Feuer
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The General Provisions, Section 12.21 A 17 (b) (2) (Hillside Ordinance, No. 168,159) provides that the side yard in the Hillside Areas is the base amount required in the zone in which the lot is located, and shall be increased "one foot for each increment of ten feet or fraction thereof above the first 18 feet above the main building." However, there is an exemption from this provision where the hillside lot fronts on streets with a 28-foot wide improved roadway Section 12.21 A 17 (i) (2). Therefore, the Department contends that the Project is exempt from the Big House Ordinance because it is located in the Hillside Area and is exempt from the Hillside Ordinance because the Subject Property fronts on a fully improved street.

However, by ZAI (ZA 96-0241), dated April 2, 1996, the question was addressed of whether the City intended a blanket exemption for houses in the hillsides located on properly developed streets. In that interpretation, the Chief Zoning Administrator opined that as to all lots in the RA, RE9, RE11, RE15, RE20, RS and R1 zones "it was not the intent to create a 'no man's land' with which certain property owners would have greater development rights than would be afforded other property owners in the same zone and geographic area. Such a result would serve neither fairness nor logic." For reasons not reflected in the file, the RE40 zone was left out of the ZA's interpretation. Further complicating the interpretation of the City's intentions is the fact that the Subject Property was created to comply with the standards for the RE15 zone which has since been down zoned to RE40. Thus, whatever reasons may have applied to the ZA's decision to leave the RE40 zone out of his ZAI, these reasons should do not apply to a nonconforming substandard lot in the RE40 zone. Examined in another way, since the Subject Property was designed to comply with the RE15 zone, the ZA's opinion that no blanket exemption was intended in interpreting the Big House and Hillside Ordinances, applies in exactly the same manner in this case as it applies to the RE15 and RE20 zones.

Ironically, had the Subject Property not been down zoned, the ZAI would have applied on its face and the Project would have been required to provide a 13-foot side yard to comply with the Big House Ordinance. It would be contrary to logic to allow a more liberal interpretation when the intent of the down zoning was to make the zoning more restrictive.

For all of these reasons, it should be clear that the City never intended to exempt the Project from the more restrictive provisions of the Big House and Hillside Ordinances to the detriment of the neighbors including our clients.

CONCLUSION

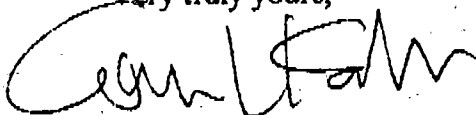
The Department's erroneous interpretations regarding the exemptions from the Specific Plan, Big House and Hillside Ordinances is erroneous and contradictory to law. An application for a building permit is a separate action by the City and therefore it is a

Councilman Michael Feuer
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Ordinance in this case is reinforced by the fact that the lot design does not comply with the minimum standards for the RE40 lot.

We ask that you immediately institute the necessary procedures to monitor any permit activity for 11979 Pinnacle Place, the Subject Property, so that before any permit is issued, these and other related issues can be properly discussed and resolved. If you have any questions, do not hesitate to call.

Very truly yours,



Corin L. Kahn

cc: Dr. & Mrs. Niles Chapman
Mr. John Diaz, President DRB
Mr. Richard Holguin, Interim General Manager, Dept. Building & Safety
Mr. Con Howe, Director of Planning
Robert Janovicki, Esq., Chief Zoning Administrator
Mr. Steven Kim, City Planner
Mulholland Tomorrow

Mulholland Tomorrow

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Paul Migdal

Mary Ann Musico

Jack Nicholson

Lisa Specht

January 26, 1998

Hon. Councilmember Michael Feuer
Councilmember, 5th District
Los Angeles City Council
Room 237, City Hall
200 North Spring Street
Los Angeles, CA 90012

Re: 11979 Pinnacle Place
Lot 23, Tract 29033
Erroneous Determination of Exemption from Mulholland
Scenic Parkway Specific Plan and Big House Ordinance

Dear Councilmember Feuer:

We have received a copy of a letter to you dated November 4, 1997, from Mr. Corin L. Kahn, the attorney representing Dr. and Mrs. Niles Chapman. Mr Kahn's letter discusses the Mulholland Scenic Parkway Specific Plan and the Department of City Planning's erroneous interpretation of the Specific Plan in reviewing a proposal to construct an approximately 12,000 square foot single family home at 11979 Pinnacle Place in the Sherman Oaks area.

From this correspondence, we understand that the Department is contending that their approval of Lot 23, Tract 29033 (the designation for 11979 Pinnacle Place) in 1980 exempts this tract from the requirements of the Mulholland Scenic Parkway Specific Plan pursuant to Section 3(D) of the Specific Plan. We agree with Mr. Kahn that the Department's interpretation is erroneous. It is not consistent with the plain language of Section 3(D), not is it consistent with the policy and intent of the Specific Plan as a whole.

The language of Section 3(D) protects property-owners and -developers from having to reapply for approvals granted by the Department prior to the passage of the Specific Plan. Hence, a land-owner who had received approval of a tract map prior to 1992 would not

have to resubmit that tract for re-approval following passage of the Specific Plan. The exemption does not, however, enlarge approval of a tract map into blanket approval of subsequent building permit applications where that application is not in compliance with requirements in effect at the time the reapplication is submitted. This is evident from the use of the term "projects" in Section 3(D) and the definition of that term in Section 4 of the Specific Plan, where it is made clear that each step in the construction process - e.g., tract map approval, specific plan exception, zoning change - is a separate "project" for the purposes of the Specific Plan.

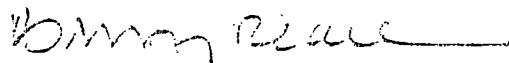
Further, the Department's interpretation of the exemption in Section 3(D) cannot be supported on the basis that it supports the "vested rights" of property owners who had a tract map approved prior to the adoption of the Specific Plan. The rights bestowed by the approval of a tract map extend only to the right to proceed through the development process for that tract, with approval at each subsequent stage contingent on compliance with the applicable requirements. Approval of a tract map does not guarantee that the project will be subject to or exempt from any particular set of requirements subsequently enacted by the City.

If the Department's interpretation of Section 3(D) is followed, the result will contradict the City Council's stated purpose in enacting the Specific Plan - "To assure maximum preservation and enhancement of the parkway's outstanding and unique scenic features and resources." The effect of the Department's position on this issue would not be limited to the property at 11979 Pinnacle Place. It would also affect other properties in the Scenic Corridor where previous actions by the Department would preclude application of the requirements of the Specific Plan and endanger the delicate balance that preserves the unique scenic and environmental attributes that characterize Mulholland Drive.

Mr. Kahn has presented a reasoned and thorough presentation of the legal aspects of this controversy in his November 4 letter, as well as in his letter of January 12, 1998, to John Diaz and members of the Mulholland Scenic Parkway Design review Board. We endorse his views. We also reiterate his request that you monitor any permit activity concerning 11979 Pinnacle Place so that this issue can be addressed and resolved.

If you have any questions or comments in this regard, please call Barry Read of Mulholland Tomorrow at (310) 318-2777..

Very truly yours,



Barry Read
Executive Director
Mulholland Tomorrow

cc: Mr. Corin Kahn, Esq.
Mr. John Diaz, Chairman, Mulholland Parkway DRB
Mr. Con Howe, Director of Planning
Mr. Robert Janovicki, Esq., Chief Zoning Administrator
Mr. Steve Kim, City Planner

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March 18, 1998

Mr. John Diaz, Chairperson
and Members of the
Design Review Board
Mulholland Scenic Parkway Specific Plan
Sookie Goldman Nature Center
2600 Franklin Canyon
Beverly Hills, CA 90210

**RE: Erroneous Interpretation Of Exemption 3(D) Regarding
Mulholland Scenic Parkway Specific Plan; Proposed Resolution**

Dear Chairman Diaz:

We have drafted a proposed resolution for the consideration and adoption by the Mulholland Scenic Parkway Specific Plan Design Review Board regarding the present policy of the Department of City Planning to grant a Specific Plan exemption, pursuant to Section 3(D), for those applications seeking a building permit for construction on an undeveloped lot, in instances where the lot was created prior to the adoption of the Mulholland Scenic Parkway Specific Plan. The proposed resolution is as follows:

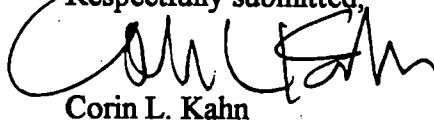
The Mulholland Scenic Parkway Specific Plan Design Review Board finds and concludes that the Director of City Planning should administer the Mulholland Scenic Parkway Specific Plan pursuant to the following interpretation and clarification of Section 3(D) of the Specific Plan:

An application for a building permit is itself a separate action by the City and therefore it is a "project" as defined by the Mulholland Scenic Parkway Specific Plan. Whereas the Specific Plan has specifically grandfathered a tract approved prior to adoption of the Specific Plan, a building permit not yet issued at the time of the adoption of the Specific Plan is not granted the privilege of any vested rights pursuant to the Specific Plan. Therefore, absent some other specific vesting mechanism pursuant to substantive law, an unissued building permit should be subject to all of the rules, regulations and

***polices in effect at the time it is issued including where applicable,
compliance with the provisions of the Specific Plan.***

We request that the Board consider and adopt this resolution or something which reflects the spirit and intend of this resolution. Thank you for your consideration of this important matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Corin L. Kahn', written over the typed name.

Corin L. Kahn

cc: Hon. Councilman Michael Feuer, Fifth District
Dr. & Mrs. Niles Chapman
Mr. Steven Kim, City Planner
Mulholland Tomorrow

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May 21, 1998

Mr. John Diaz, Chairperson
and Members of the
Design Review Board
Mulholland Scenic Parkway Specific Plan
Sookie Goldman Nature Center
2600 Franklin Canyon
Beverly Hills, CA 90210

**RE: Objections To Director's Interpretation Of 3(D) Exemption
Regarding Mulholland Scenic Parkway Specific Plan**

Dear Chairman Diaz:

BACKGROUND

On or about November 4, 1997, this office sought a clarification regarding a misinterpretation by the Department of City Planning (the "Department") of the so-called 3(D) exemption to the Mulholland Scenic Parkway Specific Plan (Ordinance No. 167,943, adopted by the City Council on May 13, 1992) (the "Specific Plan"). At that time, the Department's interpretation allowed an exemption for a building permit for a vacant lot within a tract which tract had received approval prior to enactment of the Specific Plan. By letter dated May 7, 1998, the Director circulated for public comment an Interpretation (the "Interpretation") which attempts to correct the loophole created by the Department's misinterpretation of the 3(D) exemption.

The Interpretation states essentially that any discretionary approvals issued earlier than the adoption of the Specific Plan that have been reviewed by the Citizen Advisory Committee or received explicit findings and approval by the Planning Commission, Director, Advisory Agency or Zoning Administrator, in which consideration was given to the "spirit and intent" of the predecessor to the Specific Plan, would continue to be exempt under the 3(D) exemption.