

CITY OF AGOURA HILLS  
OFFICE OF THE CITY ATTORNEY  
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TO: Honorable Mayor Weber and Members of the City Council

FROM: Craig A. Steele, City Attorney  
Candice K. Lee, Assistant City Attorney

DATE: June 22, 2006

SUBJECT: Procedure for Appeal of the Heschel West School Decision

As you are aware, the Los Angeles County Regional Planning Commission (“RPC”) has directed its staff to prepare a Final Environmental Impact Report (“FEIR”) and the documentation necessary to approve the Heschel West School project (the “Project”). County staff have informed us that they anticipate the final decision in this matter will be rendered as a consent calendar item at an upcoming meeting of the Regional Planning Commission on the morning of June 28, 2006. Both City staff and our office have reviewed the changes made to the Draft EIR as well as new project conditions that have been proposed. We all conclude that the City’s major concerns regarding the Project have not been satisfactorily addressed in the FEIR. Further, we believe that if the Project is approved, the RPC will have done so without having required the changes in the Project the City has argued for consistently.

As a result of the County’s failure to respond to the City’s requests, we find it necessary to advise the City Council of its options regarding the Project. This memorandum outlines the requirements for preserving the City’s options to challenge the County’s decision by seeking the Board of Supervisors’ review of the Regional Planning Commission’s final decision. Without an appeal, the anticipated RPC approval would stand and no changes would be made to the approved Project. Seeking review by the Board of Supervisors is a mandatory prerequisite to filing a lawsuit challenging the Project approval or the legal adequacy of the FEIR.

At the City Council meeting in the evening of June 28, 2006 we will report to the City Council orally regarding the RPC’s actions that morning. The purpose of this memorandum is to outline the applicable procedures for an appeal of the Regional Planning Commission’s anticipated approval of the Project.

**A. TIMING OF THE APPEAL**

Los Angeles County Code Section 22.60.220 provides that appeals of decisions must be initiated prior to the effective date of the decision. Los Angeles County Code Section 22.60.260 provides that the Regional Planning Commission's decision becomes effective fifteen (15) days after the receipt of the notice of the decision by the applicant, unless the decision is appealed or called up for review by the Board of Supervisors prior to the fifteenth (15th) day after the receipt of the notice. Therefore, if the City chooses to file an appeal, it must do so *before* the fifteenth (15th) day after the applicant receives notice of the Regional Planning Commission’s decision.

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Assuming that the Regional Planning Commission certifies the FEIR and approves the Project on June 28, 2006 and that the applicant receives notice of this decision on the same date, any party appealing the Regional Planning Commission's decision must file its appeal on or before July 12, 2006 during regular business hours.

The Los Angeles County Code also provides an additional safeguard by allowing decisions of the Regional Planning Commission to be called up for review by the Board of Supervisors. Los Angeles County Code § 22.60.200(B). We do not anticipate that any Member of the Board of Supervisors will call the Project up for review at this point.

The filing of an appeal vacates the decision from which the appeal is taken. Such a decision is reinstated only if the Board of Supervisors fails to act, or affirms the decision in its action. Los Angeles County Code Section 22.60.230(A)(3).

**B. CONTENTS OF THE APPEAL**

The appeal must be filed with the secretary or clerk of the Board of Supervisors on the prescribed form and must state specifically in what ways:

- 1) a determination or interpretation is not in accord with the purposes of Title 22 of the Los Angeles County Code;
- 2) an error or abuse of discretion occurred;
- 3) the record includes inaccurate information; or
- 4) a decision is not supported by the record.

Los Angeles County Code § 22.60.230(A)(1).

**C. FEE FOR APPEALS TO THE BOARD OF SUPERVISORS**

When an appellant files an appeal, he, she or it must pay a deposit, in an amount determined by the secretary or clerk of the Board of Supervisors, to be sufficient to cover the cost of one original and five copies of the transcripts of the previous hearings. If the actual cost of the transcripts is more than the amounts deposited by the appellant, the appellant must deposit the deficiency. If the actual cost of the transcript is less than the amount deposited by the appellant and no hearing is held, the secretary or clerk will refund the difference to the appellant. The appellant must also pay a processing fee to the Department of Regional Planning in the amount of \$1,437.00 to cover the costs of the appeal. Los Angeles County Code § 22.60.230(A)(2).

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Because the City is not the applicant, however, the fees for appeals that the City must pay will be reduced by fifty (50) percent. Los Angeles County Code § 22.60.230(A)(5).

**D. CALLS FOR REVIEW**

A call for review may be initiated by the affirmative vote of the majority of the members the Board of Supervisors present. A call for review by the Board of Supervisors must be made prior to the effective date of the decision being reviewed. Los Angeles County Code § 22.60.230(B)(1).

**E. PROCEDURES FOR APPEALS**

At the appeal, which will be a public hearing, the Board of Supervisors will consider only the same application, plans and materials that were the subject of the original decision. Los Angeles County Code §§ 22.60.240(B) and (C).

At the hearing, the Board of Supervisors is required to review the record of the decision and hear testimony of the appellant, the applicant, the party or body whose decision is being appealed or reviewed, and any other interested party. Los Angeles County Code § 22.60.240(D).

After the hearing, the Board of Supervisors must affirm, modify or reverse the original decision. When a decision is modified or reversed, the Board of Supervisors is required to state the specific reasons for modification or reversal. Decisions on appeals or reviews must be rendered within 30 days of the close of the hearing. The secretary or clerk of the Board of Supervisors is required to mail notice of the decision within five working days after the date of the decision to the applicant, the appellant and any other persons required to be notified pursuant to Section 22.60.190.<sup>1</sup> Los Angeles County Code § 22.60.240(E).

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<sup>1</sup> Los Angeles County Code Section 22.60.190 provides the following:

“The hearing officer, commission or board of supervisors shall serve notice of its action upon:

A. The applicant for a permit, variance, nonconforming use or structure review, development agreement or zone change, or the person owning and/or operating a use for which the revocation of a permit, variance or nonconforming use or structure is under consideration as required by law for the service of summons or by registered or certified mail, postage prepaid, return receipt requested; and

B. The following persons by first class mail, postage prepaid:

1. The first three protestants testifying or speaking at the public hearing, except at a hearing for the revocation or modification of any permit, variance or nonconforming use or structure;

2. The first three persons testifying or speaking at a public hearing in favor of the revocation or modification of any permit, variance or nonconforming use or structure;

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If the Board of Supervisors fails to act upon an appeal within the time limits prescribed in subsection E of Los Angeles County Code § 22.60.240(E), the decision from which the appeal was taken shall be deemed affirmed. Los Angeles County Code § 22.60.240(F).

**F. ADDITIONAL PROCEDURES FOR APPEALS TO THE BOARD OF SUPERVISORS**

Los Angeles County Code § 22.60.250 provides that, notwithstanding the procedures for appeals set forth in Los Angeles County Code §§ 22.60.240, upon receiving an appeal or initiating a call for review, the Board of Supervisors may also take one of the following additional actions:

- 1) Affirm the action of the Regional Planning Commission; or
- 2) Refer the matter back to the Regional Planning Commission for further proceedings with or without instructions; or
- 3) Require a transcript of the testimony and any other evidence relevant to the decision and take such action as in its opinion is indicated by the evidence. In such a case, the Board of Supervisors' decision need not be limited to the points appealed, and may cover all phases of the matter, including the addition or deletion of any conditions.

Los Angeles County Code § 22.60.250.

**ANALYSIS**

In the view of staff and our office, there are two fundamental flaws with the RPC's anticipated approval of the Project:

**1. The County Has Not Incorporated Basic Project Changes and Conditions Requested by the City of Agoura Hills.**

The City Council is aware of the various requests we have made that the County staff incorporate various changes in the Project and conditions of approval if the Project is approved that would reduce the impacts of this Project on the City of Agoura Hills. Most significantly, we specifically and repeatedly have asked the County to delete an optional multiple traffic signal scheme near the entrance to the school that the City's Traffic Engineer believes would be unsafe. Despite the fact that the impacts of this unsafe scheme would be felt primarily on City streets, the County has refused to make this basic change in the Project. Once the Project is approved by the

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3. Any other persons testifying or speaking at a public hearing that request such notification from the chairman at the hearing."

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RPC, which appears to be a foregone conclusion, we will have additional comments regarding changes that should have been made to the Project, but were not.

**2. The FEIR for the Project is Legally Inadequate**

The Project Applicant must obtain certain approvals from the City of Agoura Hills to implement the Project, if it is approved by the RPC. This makes the City a “responsible agency” under CEQA. CEQA requires a responsible agency to consider the lead agency’s EIR when making decisions related to the project. 14 Cal. Code Regs. §15096. These decisions include a responsible agency’s permitting authority over some aspect of the overall project. The responsible agency is not free to disregard the lead agency’s EIR. Thus, if the EIR goes unchallenged, the City will be required to rely on the lead agency’s EIR when determining whether to grant a permit for the project.

As such, a responsible agency must bring a legal challenge if it believes the EIR is inadequate. A lead agency’s determination to certify an EIR for a project is conclusive and, unless legally challenged, binds responsible agencies involved in approving other aspects of the project. *City of Redding v. Shasta County Local Agency Formation Comm’n*, 209 Cal. App. 3d 1169, 1176 (1989). In *City of Redding*, the court held that the Shasta County Local Agency Formation Commission (LAFCO) was not the lead agency on a proposed annexation project and therefore could not prepare its own EIR after the lead agency issued a negative declaration under CEQA. *Id.* at 1178, 1180-81. According to the court, a responsible agency that does not agree with the lead agency’s approval must legally challenge the EIR in order to not be bound by the EIR’s analysis of environmental impacts. *Id.* at 1180. Moreover, where a responsible agency disagrees with the EIR certification because it believes the EIR is inadequate for its own use, it must:

- (1) challenge the adequacy of the EIR in court within 30 days after the lead agency files a notice of determination or be deemed to have waived any objection to the adequacy of the document;
- (2) prepare a subsequent EIR if permissible under 14 Cal. Code Regs. § 15162; or
- (3) assume the lead agency role if allowed by 14 Cal. Code Regs. § 15052(a)(3).

*Id.*; see also 14 Cal. Code Regs. § 15096.

If a responsible agency, such as the City of Agoura Hills, does not challenge the lead agency’s approval within the limitations period, the EIR is presumed valid for all purposes. See *Laurel Heights Improvement Ass’n of San Francisco, Inc. v. Regents of the Univ. of California*, 6 Cal. 4th 1112, 1130 (1993) (“[S]ection 21167.2 mandates that the EIR be conclusively presumed to be valid unless a lawsuit has been timely brought to contest the validity of the EIR. This presumption acts to preclude reopening of the CEQA process even if the initial EIR is discovered

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to have been fundamentally inaccurate.”). The responsible agency is then limited to the environmental impacts identified in the EIR when making project decisions unless the responsible agency meets one of the limited statutory exceptions.

Therefore, if the City chooses not to challenge the lead agency’s certified EIR it will be bound by the environmental impacts set forth in the EIR, unless it is free to require a subsequent EIR or assume the lead agency’s role. The City will be precluded from requiring any additional environmental information and analysis before it processes the permit applications related to the Project. To challenge the adequacy of the EIR, the City must first appeal the RPC’s decision to the Board of Supervisors and, if necessary, challenge the Board of Supervisor’s decision in court.

**CONCLUSION**

If the City Council continues to believe that the Project, in the form we anticipate will be approved by the RPC, is unacceptable the City must appeal the RPC’s decision. Similarly, if the City desires not to be bound by the County’s FEIR for the Project, the City must challenge the County’s certified FEIR. Seeking the Board of Supervisors’ review of the Regional Planning Commission’s final decision is a mandatory prerequisite to filing a lawsuit challenging the Project approval or the legal adequacy of the FEIR. Assuming that the Regional Planning Commission approves the FEIR and the Project on June 28, 2006 and that the applicant receives notice of this decision on the same date, any party appealing the Regional Planning Commission’s decision must file its appeal on or before the close of business on July 12, 2006. Because this deadline would be prior to the City Council’s next regular meeting, we seek direction from the City Council this evening.

cc: Greg Ramirez, City Manager  
Mike Kamino, Director of Planning and Community Development  
Allison Cook, Senior Planner