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[VIA E-MAIL: JMONTES@BWSLAW.COM]

Joseph M. Montes, Esq.
City Attorney
City of Santa Clarita
23920 Valencia Boulevard, Suite 300
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Re: Sand Canyon Country Club

Mr. Montes:

This Firm represents Sand Canyon Country Club ("SCCC") in connection with its proposed Sand Canyon Resort development. As you know, SCCC currently operates three 9-hole golf courses, a driving range, a club house/restaurant, snack bar, retail store, equipment rental facility, and adjacent parking facility on approximately 300 acres at 27734 Sand Canyon Road ("Property"). SCCC has proposed the redevelopment of approximately 77 acres of the Property, a portion of which would include the Sand Canyon Resort ("Project"). The City is currently preparing an Environmental Impact Report ("EIR") to evaluate the Project's potential environmental impacts.

We understand that a group called "Stop Sand Canyon Resort" ("SSRC") has alleged that the City is estopped from approving the Project based on a finding from Resolution 96-120 associated with the Hunters Green Residential Development and Golf Course ("Hunters Green Project"). In approving the Hunters Green Project, one of the City Council's stated public benefits was that the Hunters Green Project would preserve approximately 300 acres of land in perpetuity as recreational/open space. SSRC would like the City to believe that this finding must be extrapolated to permanently enjoin any future redevelopment of the Property. Not only is this position legally incorrect, but its acceptance by the City is tantamount to a taking via inverse condemnation that would expose the City to substantial financial liabilities.

We will first address SSRC's misapplication of Resolution 96-120. That Resolution includes a CEQA statement of overriding considerations pursuant to Public Resources Code Section 21081 finding that the benefits of the Hunters Green Project outweigh its significant effects on the environment. Specifically, Resolution 96-120 states that the unavoidable environmental impacts of the Hunters Green Project are acceptable when balanced against the public benefits of

the Project, one of which is that the "project would preserve approximately 300 acres of land into perpetuity as recreational/open space." (Resolution 96-120, Section 3(c).) A portion of the referenced 300 acres is the 77 acre Property. Condition 83 of the Conditions of Approval for the Hunters Green Project implemented Resolution 96-120 by requiring that the applicant record golf course/open space easements on golf course/open space lots prior to recordation of the first residential lot (including what is now the Project site) to restrict uses to golf course and open space uses.

Neither the statement of overriding considerations nor Condition 83 constitutes a perpetual use encumbrance, as SSRC claims. In fact, the Property has never been encumbered by any easement or covenant restricting its use to open space or golf course. What is recorded against the Property is a dedication to the City restricting *residential construction* on lots 74, 75, 76, 77, 78, 79, 80 and 81 of Tract No. 52004. This tract map was approved, and dedications accepted, in December 1999. The Project does not propose residential construction and therefore is consistent with this recorded dedication.

SSRC vastly overreaches with its argument about the Hunters Green Project statement of overriding considerations and Resolution 96-120. An environmental restriction made by a landowner runs with the land and is binding on successors *only when* such a covenant is recorded. (Civ. Code, § 1471, subd. (a).) Property is not encumbered by an entitlement for a project simply because a project is approved. Statements of overriding considerations reflect project-specific policy considerations focusing on "more general reasons for approving" a project. (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 826, 847.) A statement of overriding considerations reflects balancing of "competing public objectives when the agency decides to approve a project…" (CEQA Guidelines § 15021(d).) Statements of overriding considerations are project-specific and do not bind future projects, particularly when findings and conclusions from a previous project have little to no value for the CEQA evaluation for the new project. (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839.)

Additionally, because the Project's CEQA EIR will not tier off of the Hunters Green Project EIR or otherwise rely on the Hunters Green Project EIR, the Hunters Green Project overriding considerations are project-specific and thus irrelevant with respect to the Project's CEQA process. (*See California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957.) Even if the Project's EIR were to tier off the Hunters Green Project EIR, the City could not rely on the Hunters Green Project's adopted statement of overriding considerations and would be required to adopt a project-specific statement of overriding considerations. (*Communities for a Better Env't v. California Resources Agency* (2002) 103 Cal.4th 98 [an agency cannot rely on a statement of overriding considerations for a previous EIR when approving a future project that tiers from that EIR; responsible public officials must explain specifically why they are approving the later project in a new statement of overriding considerations].) Because the Project EIR does not tier off the Hunters Green Project EIR, the Hunters Green Project EIR statement of overriding considerations is legally irrelevant.

Second, as noted above, the City exposes itself to substantial liability for inverse condemnation if it were to restrict the use the Property's use as requested by SSRC. Such a restriction would amount to a regulatory taking. There are four elements to a cause of action for inverse condemnation, each of which is satisfied here: (1) SRCC has a legal interest in the real property at issue, which has already been established by the Project's application to the City; (2) the City substantially participated in the activity giving rise to the inverse condemnation (e.g., by enforcing a use restriction based solely on Resolution 96-120); (3) SRCC's real property was taken or damaged resulting in a diminution in value (i.e., the difference in value between open space and SRCC's proposed resort Project); and (4) the City's enforcement of the use restriction was the proximate (or substantial) cause of the taking, which would be without question.

If the City were to read Resolution 96-120 as a perpetual use restriction, as SSRC advocates, it could be liable for damages having effectively denied SRCC of all economically beneficial or productive use of the Property. (*Lucas v South Carolina Coastal Council* (1992) 505 US 1003, 112 S Ct 2886.) The measure of damages is the fair market value of SRCC's proposed resort Project, which is easily many millions of dollars.

For the reasons above, SSRC's position that the City is estopped from approving the Project because of Resolution 96-120 is legally incorrect. The cost of SSRC's error should not be borne by the City in an inverse condemnation action. We therefore urge the City to reject SSRC's position in writing.

Sincerely,

Sean Matsler

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