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6 Attorneys for Petitioner Canyon Back Alli-
7 ance, a Non-Profit Public Benefit
Corporation

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 CANYON BACK ALLIANCE, a non-
11 profit public benefit corporation

12 Petitioner,

13 vs.

14 CITY OF LOS ANGELES; CITY ENGI-
15 NEER, DEPARTMENT OF PUBLIC
WORKS, BUREAU OF ENGINEERING
FOR THE CITY OF LOS ANGELES

16 Respondents.

17 MOUNTAINGATE OPEN SPACE
18 MAINTENANCE ASSOCIATION;
PROMONTORY ESTATES FINIS CON-
19 DOMINIUM HOMEOWNERS ASSO-
ASSOCIATION; STONEY HILL SECURITY
20 ASSOCIATION; MOUNTAIN VIEW
HOMEOWNERS ASSOCIATION;
21 MOUNTAINGATE COMMUNITY AS-
SOCIATION

22 Real Parties In Interest

CASE NO. BS 101787

**AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE (C.C.P.
§ 1085)**

1 Petitioner Canyon Back Alliance (“*Petitioner*”) alleges as follows:

2 **THE PARTIES**

3 1. Petitioner is a California non-profit public benefit corporation dedicated to pre-
4 serving unrestricted public access to parkland trails in the Santa Monica Mountains.

5 2. Respondent City of Los Angeles is a municipality organized and existing under the
6 laws of the State of California, and includes the real property described herein.

7 3. Respondent City Engineer, Department of Public Works, Bureau of Engineering is
8 the City official responsible for assuring that the City of Los Angeles complies with its obligation
9 to maintain open and unrestricted access to public streets within the City, in compliance with its
10 statutory obligation under Vehicle Code § 21101.6. (Respondents will be referred to collectively
11 as the “City.”)

12 4. Real Parties In Interest Mountaingate Open Space Maintenance Association, Prom-
13 ontory Estates Finis Condominium Homeowners Association, Stoneyhill Security Association,
14 Mountain View Homes Homeowners Association and Mountaingate Community Association
15 (“Real Parties”) are the homeowner associations representing those who reside either on Stoney
16 Hill Road or on streets accessible through Stoney Hill Road within the Mountaingate community
17 in the Brentwood area of Los Angeles (the “Stoney Hill Enclave”).

18 **GENERAL ALLEGATIONS**

19 5. California law prohibits municipalities from *partially closing* public streets by allowing
20 local residents to enjoy public streets in their neighborhoods while limiting or prohibiting access
21 to non-residents. This fundamental right of unrestricted public access to public streets was rec-
22 ognized in *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749 (1979). The Court in *La-*
23 *fayette* drew upon the public’s “common and fundamental right” to use public streets and high-
24 ways in holding that local authorities cannot “partially close” a public street by allowing local resi-
25 dents to enjoy access not available to the general public. The Supreme Court affirmed this fun-
26 damental public right of access in *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982), where it ruled
27 that municipalities must remove traffic barriers designed to provide local residents with privileged
28 access to public streets. The Court relied upon the analysis in *Lafayette* in holding that municipali-

1 ties cannot allow the “partial closure” of a public street.

2 6. The Legislature subsequently enacted Vehicle Code § 21101.6, which codified the
3 common law right of access: “*Placement of gates or other selective devices on streets denying or restricting ac-*
4 *cess to certain members of public; prohibition; codification of existing law.* Notwithstanding Section 21101,
5 local authorities may not place gates or other selective devices on any street which deny or restrict
6 the access of certain members of the public to the street, while permitting others unrestricted ac-
7 cess to the street.”

8 7. Stoney Hill Road is and always has been a public street. The City nevertheless *par-*
9 *tially closed* Stoney Hill Road by temporarily withdrawing it from public use on October 25, 1983
10 (Exhibit A) and issuing a permit allowing Real Parties or their predecessors to construct “im-
11 provements” on and along Stoney Hill Road for the purpose of restricting public access and al-
12 lowing local residents to enjoy privileged access to the street not available to the general public.
13 The City, however, expressly reserved the unilateral right to terminate or repeal the withdrawal
14 from public use at any time and, upon doing so, compel Real Parties to remove at Real Parties’
15 expense all improvements within the public right of way, as provided in Exhibits A and B.

16 8. The Los Angeles Superior Court’s Writs and Receivers Department has previously
17 held that the City’s practice of “withdrawing” public streets from public use is an illegal partial
18 closure whenever local residents are permitted to continue using the “withdrawn” streets. This
19 Department’s ruling was appealed by the local residents’ association in *Citizens Against Gated En-*
20 *claves v. Whitley Heights Civic Assoc.*, 23 Cal. App. 4th 812 (1994). The Court of Appeal held that the
21 common law right applied in *Lafayette* and *Rumford* and subsequently codified under Vehicle Code
22 § 21101.6 prohibits the partial closure of a public street. The City’s tactic of withdrawing public
23 streets from public use, while allowing local residents to continue using the “withdrawn” public
24 streets is indistinguishable from an illegal partial closure. The statute authorizing municipalities to
25 withdraw public property from public use was therefore held inapplicable to public streets.

26 9. The City’s withdrawal of Stoney Hill Road from public use, while allowing Stoney
27 Hill Enclave residents to continue using Stoney Hill Road, constitutes an illegal partial closure of a
28 public street. Petitioner and other members of the public requested that the City recognize its

1 legal obligation to protect the public's fundamental right to access Stoney Hill Road by terminat-
2 ing its illegal withdrawal of Stoney Hill Road from public use and compelling Real Parties to re-
3 move all "improvements" in the public right of way. Petitioner and others met with City repre-
4 sentatives in an effort to resolve the matter without need for litigation. But the City has refused
5 to comply with its legal obligations under State Law, despite the ruling in *Whitley Heights*, which
6 made clear the illegality of the City's withdrawal of public streets for the use of local residents.

7 10. The City's refusal to comply with State Law by restoring Stoney Hill Road to public
8 use has prejudicially affected the public's fundamental right of access to public streets for pur-
9 poses of travel, recreation and association. A writ of mandate compelling the City to restore pub-
10 lic access on Stoney Hill Road is necessary to cure this prejudicial impairment of the public's fun-
11 damental right of access to public streets.

12 **WRIT OF MANDATE**

13 *(C.C.P. §1085)*

14 11. Petitioner alleges and incorporates as if fully set forth herein paragraphs 1 through
15 10 of this Petition.

16 12. The general public has a right to unrestricted access to Stoney Hill Road, a public
17 street. The City, by temporarily "withdrawing" Stoney Hill Road from public use and allowing
18 Real Parties to restrict access to the street, has partially closed the public street in violation of
19 State Law and the general public's right of access. The City has retained authority to terminate or
20 repeal the "withdrawal" of Stoney Hill Road and compel Real Parties to remove all improvements
21 within the public right of way that impair public access to the public street.

22 13. The City has a non-discretionary obligation to maintain Stoney Hill Road in accor-
23 dance with State Law by removing or compelling others to remove "gates or other selective de-
24 vices on any street which deny or restrict the access of certain members of the public to the street,
25 while permitting others unrestricted access to the street." Vehicle Code § 21101.6.

26 14. Petitioner and the general public have no adequate remedy at law. Monetary dam-
27 ages would not remedy the ongoing violation of public rights resulting from the City's failure to
28 comply with Vehicle Code § 21101.6. The public harm can only be remedied by removal of all

1 structures and mechanisms impairing public access on, to or through Stoney Hill Road. Absent
2 mandamus relief, the public rights protected by Vehicle Code § 21101.6 will be lost, causing ir-
3 reparable harm to Petitioner and to the general public.

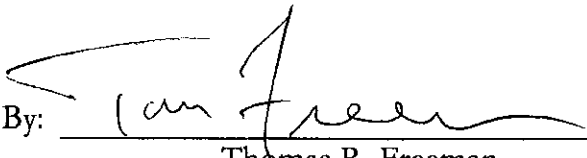
4 **PRAYER FOR RELIEF**

5 Based upon the foregoing facts, Petitioner prays for relief as follows:

- 6 1. Issuance of a writ of mandate, compelling the City to comply with its non-
7 discretionary legal obligation under Vehicle Code § 21101.6 by terminating the street withdrawal,
8 as contemplated by paragraph 7 of the recorded Offer and Agreement (Exhibit B, pp. 16-17), by
9 revoking any permits issued pursuant to said Agreement, and by removing or compelling the re-
10 moval of all impediments to public access on Stoney Hill Road, including the gates and fences at
11 the entrance and terminus of Stoney Hill Road, the gate house structure at the entrance to the
12 Stoney Hill Enclave on Stoney Hill Road, the signs posted on the public street or within the right
13 of way indicating that public access is restricted on Stoney Hill Road, the private surveillance cam-
14 eras on Stoney Hill Road or within the public right of way, and the use of any other mechanisms
15 to restrict public access on or through Stoney Hill Road.
- 16 2. An order enjoining and restraining the City and Real Parties in Interest, and all
17 those acting as their agents, from maintaining in place any gates or other selective devices on
18 Stoney Hill Road which deny or restrict the access of certain members of the public to the street,
19 while permitting others unrestricted access to the street.
- 20 3. An award of reasonable attorneys' fees, costs and expenses.
- 21 4. Any further relief as this Court deems just and proper.

22 DATED: March 16, 2006

BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS & LINCENBERG, P.C.

23
24
25 By: 

26 Thomas R. Freeman
Attorneys for Petitioner Canyon Back Alliance

EXHIBIT A

ELIAS MARCHINEZ
CITY CLERK

RECEIVED BUR. OF ENGR.
ADMIN. DIV. RM. 850
Board/Council Section
OCT 31 1983
Assigned to **RED**



R.L.M.

OFFICE OF
CITY CLERK
ROOM 385, CITY HALL
LOS ANGELES, CA 90012
489-3705

WHEN MAKING INQUIRIES
RELATIVE TO THIS MATTER,
REFER TO FILE NO

83-0993

TOM BRADLEY
MAYOR

CD 11

D+W
WLA

October 25, 1983

C.F. Mountaingate Associates
c/o LATHAM & WATKINS
Attorneys at Law
555 South Flower Street
Los Angeles, CA 90071-2466

Police Commission
Building and Safety Department
City Attorney
Board of Public Works
Planning Department
~~Bureau of Engineering, Real Estate Division~~
~~Street Vacation - Opening and Widening Div.~~
Board of Water and Power Commissioners

Department of Transportation
Traffic Section
Board of Fire Commissioners

RE: STONEY HILL ROAD - REQUEST FOR STREET CLOSURE & WITHDRAWAL FROM
PUBLIC USE.

At the meeting of the Council held OCTOBER 25, 1983, the
following action was taken:

- Attached report adopted..... X
- " motion " ().....
- " resolution " ().....
- Ordinance adopted.....
- Motion adopted to approve attached report.....
- " " " communication.....
- To the Mayor for concurrence.....
- To the Mayor FORTHWITH.....
- Mayor concurred.....
- Appointment confirmed.....
- Appointee has/has not taken the Oath of Office.....
- Findings adopted.....
- Negative Declaration adopted..... X
- Categorically exempt.....
- Generally exempt.....
- EIR certified.....
- Tract map approved for filing with the County Recorder.....
- Parcel " " " " " " " ".....
- Bond approved.....
- Bond is No. _____ of Contract.....
- Resolution of acceptance of future street to be known as
_____ adopted.....
- Agreement mentioned therein is/are No. _____
_____ of Contracts.....

Elias Martinez
City Clerk
prm

Your

PUBLIC WORKS

Committee

reports as follows:

RECOMMENDATION

- A. That Stoney Hill Road southerly of Mountaingate Drive as shown colored yellow on the attached Exhibit "A" be withdrawn from public use pursuant to Section 37359 of the State Government Code, except access be permitted for public safety, public service and public utilities vehicles.
- B. That a security gate house be permitted to be located in Stoney Hill Road approximately 200 feet southerly of Mountaingate Drive substantially as shown on the attached Exhibit "B".
- C. That the 12 conditions specified in the attached City Engineer's report dated September 12, 1983 be established as the requirement to be complied with by the petitioner for the withdrawal from public use and for the security gate house installation.
- D. That the Council find that this proposal to withdraw from public use is categorically exempt from the CEQA of 1970 pursuant to Article VII, Class 5(3) of the City's Guidelines.

SUMMARY

In response to the Motion (Braude-Bernson), the request from C.F. Mountaingate Associates dated June 7, 1983 for a street closure and withdrawal from public use of Stoney Hill Road was referred to the proper agencies and departments as needed for their response and recommendation.

The extent of the public dedication of Stoney Hill Road is shown colored yellow on the attached Exhibit "A". The proposed security gate house is shown on the attached Exhibit "B".

Stoney Hill Road is a hillside collector street extending southerly from Mountaingate Drive for approximately 1,250 feet. It is improved within a 50-foot wide dedication. There are other undedicated roadways branching off from Stoney Hill Road. The adjacent areas are under residential developments. Stoney Hill Road could be used for fire access to wilderness terrain lying southerly of these developments.

Stoney Hill Road is and would be used primarily by residents of the Mountaingate projects. It is not presently needed for vehicular circulation of the general public. The access needs of these residents would not be affected by the street withdrawal. An attached draft of an agreement for the street withdrawal is generally satisfactory and contains in part the following provisions:

1. Public liability insurance satisfactory to the City Attorney.

Your

PUBLIC WORKS

Committee

reports as follows:

2. Indemnifies the City from any liabilities resulting out of the security gate house placement.
3. Maintenance of the street in a safe condition.
4. Permits access to police, fire and public service vehicles.
5. Removal of the security gate house and other placements upon the restoration of Stoney Hill Road to public use.
6. Requires permit to do any repair or reconstruction of the street.

This agreement is similar to the format used for the withdrawal of Vereda de la Montura from public use which was approved by the City Council on May 4, 1982.

Since Stoney Hill Road is not presently being used for vehicular circulation of the general public and its use is primarily by residents of the area, the request for withdrawal of Stoney Hill Road from public use and the placement of a security gate house could be conditionally approved, to provide safer security for the residents of Mountaingate.

If in the future, the operation of Stoney Hill Road as a hillside collector street becomes imminent, it will be necessary to restore it to public use.

Respectfully submitted,

PUBLIC WORKS COMMITTEE

IW:sr
9-28-83
CD 11

Form No. 42

310 329 4125 P.04

8

JUN-13-1986 13:17

Office of the City Engineer
Los Angeles, California

To the Public Works Committee
Of the Honorable Council
Of the City of Los Angeles

SEP 12 1983

Honorable Members:

C. D. No. 11

SUBJECT:

Stoney Hill Road Southerly of Mountaingate Drive - Proposal to
Withdraw from Public Use.

RECOMMENDATIONS:

- A. That Stoney Hill Road southerly of Mountaingate Drive as shown colored yellow on the attached Exhibit "A" be withdrawn from public use pursuant to Section 37359 of the State Government Code, except access be permitted for public safety, public service and public utilities vehicles.
- B. That a security gate house be permitted to be located in Stoney Hill Road approximately 200 feet southerly of Mountaingate Drive substantially as shown on the attached Exhibit "B".
- C. That the conditions listed below be established as the requirements to be complied with by the petitioner for the withdrawal from public use and for the security gate house installation.
- D. That the City Council finds that this action is in a nature of a minor street vacation and is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as included in the City's Environmental Guidelines under Article VII, Class 5(3).

CONDITIONS:

1. That an agreement be executed and recorded satisfactory to the City Attorney, containing substantially the provisions included in the attached draft agreement labeled Exhibit "C".

2. That a vehicular turnaround be constructed near the north side of the security gate house, upon a configuration approved by the City Engineer.
3. That a satisfactory sign be posted at the entrance of Stoney Hill Road at Mountaingate Drive notifying the public that the street has been withdrawn from public use pursuant to Section 37359 of the State Government Code.
4. That the exit lane at the security gate house be a minimum width of 11 feet.
5. That in the case of emergency such as the need to use the street as a fire escape route, the road be opened immediately.
6. That access be given to property owners located beyond the public dedication of Stoney Hill Road.
7. That rules for the operation of this gate as to access as provided in this report and in the agreement be posted in the security gate house.
8. That a street light be provided at the security gate house satisfactory to the Bureau of Street Lighting.
9. That any required signs, stripings, islands and reflectors be provided satisfactory to the Department of Transportation.
10. That the gate house and other related improvements be done under permit from the City Engineer.
11. That the security gate systems be approved by the Fire Department and a plot plan be submitted for any proposed roadway changes.
12. That the security gate house meet Building and Safety Code requirements.

TRANSMITTAL:

Council File No. 83-0993.

DISCUSSION:

Request for Street Withdrawal: The Public Works Committee on June 10, 1983, referred the attached Motion (Braude-Bernson) to this office for a report. The Motion requests recommendations on the C. F. Mountaingate Associates' proposal to provide security protection for Mountaingate residents by seeking the withdrawal of Stoney Hill Road from public use pursuant to Section 37359 of the State Government Code. Their proposal also includes the placement of a security gate house just southerly of Mountaingate Drive.

The extent of the public dedication of Stoney Hill Road is shown colored yellow on Exhibit "A". The proposed security gate house is shown on Exhibit "B".

Description of Street to be Withdrawn: Stoney Hill Road is a hillside collector street extending southerly from Mountaingate Drive for approximately 1,250 feet. It is improved within a 50-foot wide dedication. There are other undedicated roadways branching off from Stoney Hill Road. The adjacent areas are under residential developments. Stoney Hill Road could be used for fire access to wilderness terrain lying southerly of these developments.

Vehicular Circulation: Stoney Hill Road is and would be used primarily by residents of the Mountaingate projects. It is not presently needed for vehicular circulation of the general public. The access needs of these residents would not be affected by the street withdrawal.

Agreement for Street Withdrawal: The attached draft of the agreement for the street withdrawal is generally satisfactory and contains in part the following provisions:

1. Public liability insurance satisfactory to the City Attorney.
2. Indemnifies the City from any liabilities resulting out of the security gate house placement.
3. Maintenance of the street in a safe condition.
4. Permits access to police, fire and public service vehicles.

EXHIBIT B

LATHAM & WATKINS

ATTORNEYS AT LAW

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2466

TELEPHONE (213) 485-1234
CABLE ADDRESS LATHWAT

TWX 910 321-3733
TELECOPIER (213) 680-2098

PAUL R. WATKINS (1898-1973)

DANA LATHAM (1898-1974)

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701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197

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1333 NEW HAMPSHIRE AVE., N.W., SUITE 1200

WASHINGTON, D. C. 20036-1594

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TELECOPIER (202) 828-4415

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BEARS TOWER, SUITE 6900

CHICAGO, ILLINOIS 60606

TELEPHONE (312) 876-7700

TELECOPIER (312) 993-9767

TWX 910 221-0355

NEWPORT BEACH OFFICE

660 NEWPORT CENTER DRIVE, SUITE 1400

NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (714) 752-9100

TELECOPIER (714) 759-8891

June 7, 1983

BY HAND DELIVERY

Councilman Marvin Braude
Los Angeles City Council
City Hall - Room 275
Los Angeles, California 90012

Re: Mountaingate Application for Closure
and Withdrawal From Public Use of
Stoney Hill Road

Dear Councilman Braude:

This letter is written on behalf of our client, C. F. Mountaingate Associates, for the purpose of requesting a street closure and withdrawal from public use of Stoney Hill Road. This closure would be accomplished by means of a security gate house to be located on Stoney Hill Road immediately south of the intersection with Mountaingate Drive. Enclosed herewith for your information are the following documents:

1. Mountaingate Land Use Plan, showing location of security gate house, labeled Exhibit A;

2. Security gate house design labeled Exhibit B;

3. Offer and Agreement for the Withdrawal of Public Street From Public Use and to Permit the Closure Thereof, labeled Exhibit C, and which agreement is to be entered into between Mountaingate Security Association and the City of Los Angeles; and

Councilman Marvin Braude
June 7, 1983
Page Two

4. A document titled "Disclosure" and labeled Exhibit D, relating to notice to prospective buyers of intention to install a security gate house and the costs related thereto.

The closure of Stoney Hill Road, south of the point indicated as "security gate" on Exhibit A, is hereby requested pursuant to California Government Code Section 37359. To accomplish this withdrawal and closure, a homeowners association named Mountaingate Security Association will be willing to enter into the agreement with the City of Los Angeles in the form attached hereto as Exhibit C. This agreement is in a form provided by the Los Angeles City Attorney's Office, and it includes each of the conditions imposed in connection with a withdrawal and closure of a public street in Los Angeles which was previously approved by the City Council. Each of these conditions are acceptable to the Mountaingate Security Association. It is anticipated that should the City Council approve a closure and withdrawal from public use of Stoney Hill Road, such withdrawal, of course, would not prohibit the City Council or the City in acting in any manner authorized by the City Council or the City to revoke the withdrawal at any time.

Such a closure is necessary for the safety and protection of persons who use Stoney Hill Road. The residents now living in the Mountaingate project are greatly concerned about security protection. Unless protection afforded by the closure is provided, the inducement to engage in criminal activities would be too enticing. Furthermore, residential development is occurring within the area. Those who have expressed an interest in acquiring homes within the area desire extraordinary criminal protective arrangements. These prospective purchasers are well aware of the temporary nature of the closure and the costs of maintaining the same. All present purchasers have, and each prospective purchaser must, execute the form of the "Disclosure" which is enclosed herewith and which will be revised if the security entrance is approved by the Los Angeles City Council. It is essential that the closure be approved as promptly as possible to permit the continuing development of the project.

It is respectfully requested that the proposed closure and withdrawal from public use be referred to the appropriate engineering offices and city departments, including, the Board of Public Works, the Traffic Department, the Fire Department, and the Police Department for their responses as soon as possible and, once these responses have been

Councilman Marvin Braude
June 7, 1983
Page Three

received, that such withdrawal and closure be submitted to the City Council for its approval.

Respectfully submitted,

LATHAM & WATKINS

By H. Randall Stoke *RS*
H. Randall Stoke

Attorneys for C. F. Mountaingate
Associates

Enclosures

cc w/encs: Norman Roberts, Esq.
Mr. Tom Shollin
Ms. Cindy Miscikowski ✓

OFFER AND AGREEMENT FOR THE WITHDRAWAL
OF PUBLIC STREET FROM PUBLIC USE
AND TO PERMIT THE CLOSURE THEREOF

MOUNTAINGATE SECURITY ASSOCIATION (hereafter referred to as "Association") hereby offers and agrees with the City of Los Angeles as follows, said offer to be accepted by the City of Los Angeles issuing a permit for the construction or installation of fences, gates, or other improvements to effectuate the closure mentioned hereafter.

RECITAL

On _____, 1983 the Council of the City of Los Angeles ordered the withdrawal from public use of Stoney Hill Road from public use, except for public safety, public service and public utility vehicles, said withdrawal being pursuant to California Government Code Section 37359. Said withdrawal, however, was subject to certain conditions, among which were that Association execute certain agreements to protect the City and the public street. This offer and agreement is intended to provide such protection. It is to become effective upon the issuance of a permit by the City Engineer permitting the physical closure of said public street.

AGREEMENT

Association therefore offers and agrees as follows:

1. That we will maintain comprehensive broad form public liability insurance coverage against claims and liabilities for personal injury, death or property damage arising from the placement of gates, fences or closing devices pursuant to permission granted to it, said insurance to be in an amount of not less than \$500,000.00 single limit for each occurrence, and that the City of Los Angeles will be named in the policies of insurance as an additional insured. Said policies of insurance shall be subject to the approval of the City Attorney of the City of Los Angeles. In the event the policies should lapse or be cancelled, we understand the City may immediately terminate permission to install such fences, gates or other closing devices and remove them without further notice.

2. That without regard to the insurance limitations mentioned above and/or the coverage provided by the policies of insurance, we will indemnify the City of Los Angeles, its boards, Officers, and employees from any and all claims, demands or liabilities arising out of the placement of such fences, gates or other closing devices.

3. That we will maintain in a reasonably satisfactory and safe condition for all users thereof all sidewalks, parkways, curbs, gutters, roadways and storm drain catch basins located within the streets withdrawn from public use, including routine sweeping or cleaning as may be necessary. We hereby acknowledge that said sidewalks, parkways, curbs, gutters, roadways and storm drain catch basins are in a satisfactory condition at this time and are subject to no dangerous conditions. We will provide insurance as set forth above and will indemnify as set forth above for any and all claims, demands or liabilities arising out of the condition, at this time and in the future of sidewalks, parkways, curbs, gutters, roadways and storm drain catch basins.

Notwithstanding the above, however, we do not assume the obligation and will not maintain sewers, drains, other than the catch basins, and street lights, and maintenance of such facilities will remain a City responsibility.

4. We will further indemnify the City of Los Angeles from any and all claims, demands or liabilities arising out of any claimed or actual substantial impairment of any property owner's or occupant's easement of ingress or egress and easement of light, air and view in the public street easement. In accepting this obligation it is recognized that each owner of property adjacent to the street withdrawn from public use retains private easements of ingress and egress and light, air and view in the street and the improvements thereon, and that the closure authorized by the City Council pursuant to California Government Code Section 37359 is of only the public's ability to utilize the street, and does not affect any private rights which may exist therein.

5. We will provide reasonably convenient access to all owners or occupants of the properties adjacent to the street withdrawn from public use and to their invitees and guests.

6. We will permit reasonably convenient access, and immediate access in emergency conditions, to police, fire, public officials on official business, public utility personnel, and their equipment and vehicles, and to state, county, and municipal personnel, equipment and vehicles providing services or providing repair and maintenance of the public facilities which the property owners association has not agreed to maintain.

7. It is further understood and agreed that the referenced withdrawal from public use is not a permanent withdrawal and that at such time as the City Council of the City of Los Angeles shall so determine said withdrawal may be terminated or repealed and the street once again opened to public use. In the event this occurs, we will remove all

improvements we have placed within the public way, said removal to be at our expense. In the event we do not do so upon ten days' written notice from the City of Los Angeles we further understand and agree that the City of Los Angeles may do so, may dispose of the removed materials in any way it deems advisable, including the disposal thereof as waste or useless material, and may recover the cost of removal from us.

8. We also understand and agree that any fences, gates, or other closing devices to be utilized shall be constructed or installed at our sole expense. Such construction or installation will be done only after receiving a permit from the Los Angeles City Engineer, and, if legally required, from the Los Angeles Department of Building and Safety. Thereafter, we will pay all costs of maintenance or repair of such fences, gates or other closing devices, including payment for any electrical power which may be supplied thereto. We will further install upon the fences, gates or other closing devices such notices or signs as may be specified by the City of Los Angeles through either its Bureau of Engineering or its Department of Transportation containing such notices as they may specify or as they may approve, and we will pay the costs of making such signs, installing such signs or reinstalling such signs should they be removed or vandalized.

9. In the event we desire to reconstruct, repair, maintain, or otherwise do work upon the public improvements withdrawn from public use we will do so only after receiving City permission through permits issued by the Los Angeles City Engineer. We will pay all legally imposed fees for such permits.

Executed this ____ day of _____, 1983.

MOUNTAINGATE SECURITY ASSOCIATION

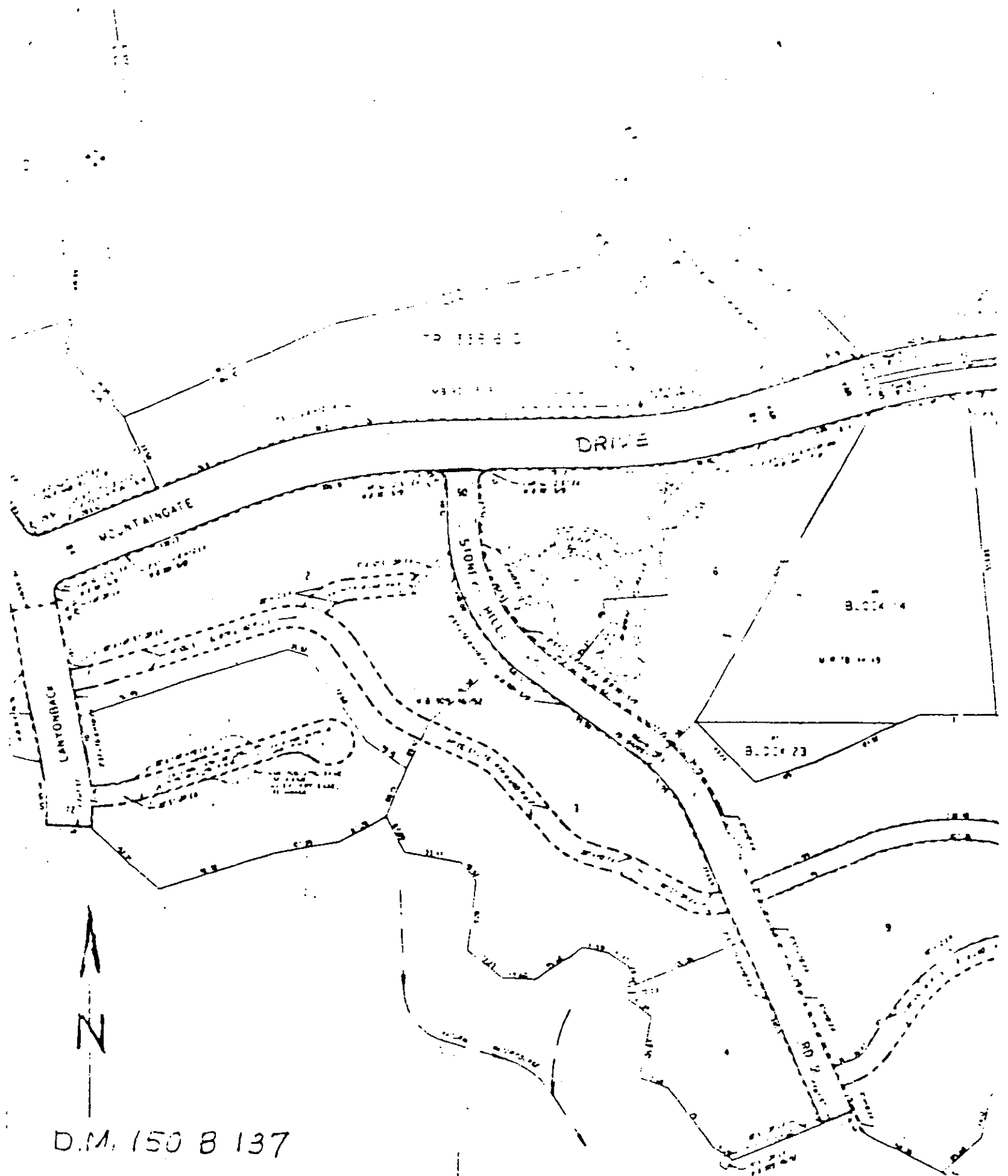
By _____
President

By _____
Secretary

Approved as to form:
IRA REINER, City Attorney

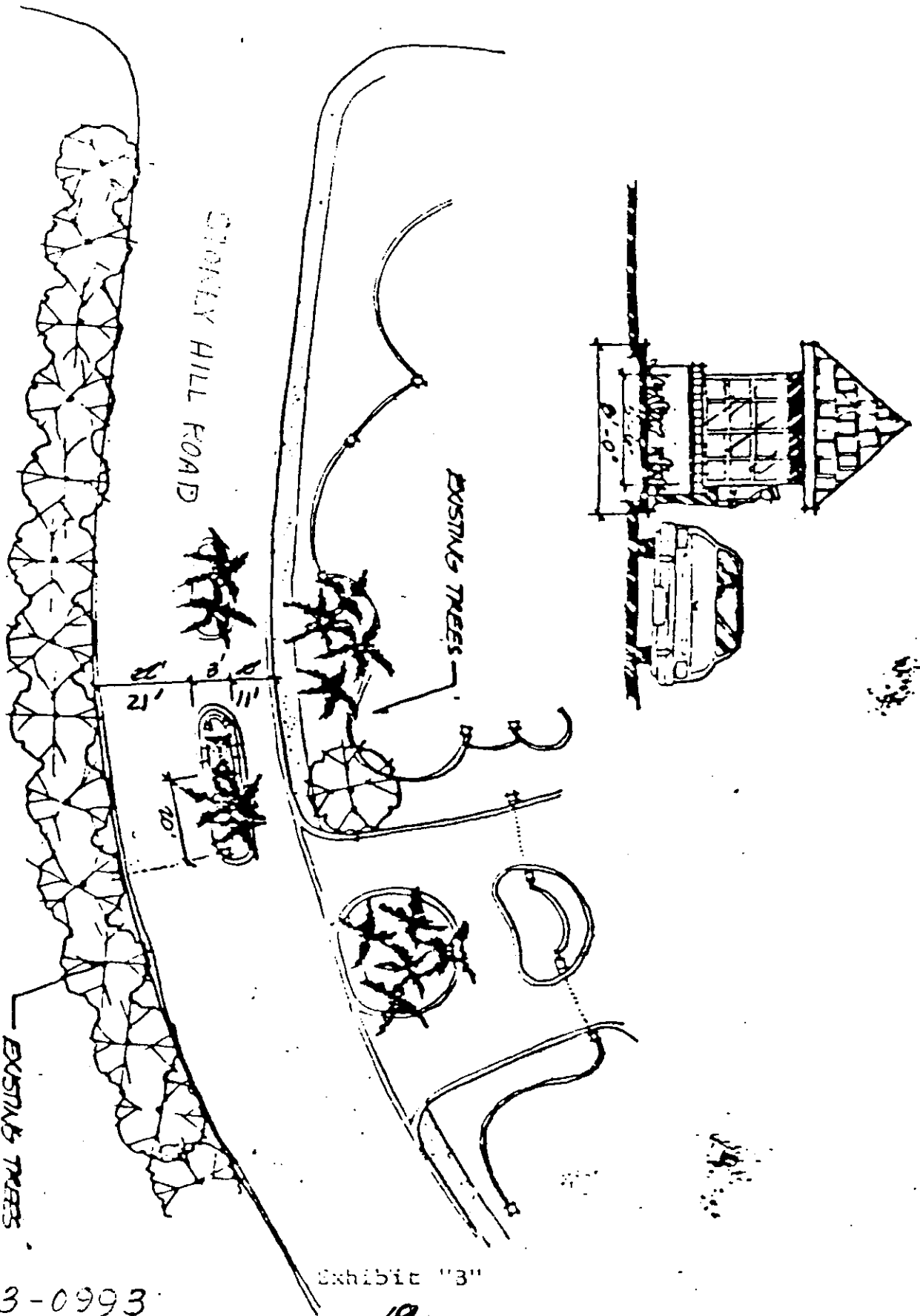
Date: _____

By _____
Assistant



D.M. 150 B 137

MOUNTAINGATE DRIVE



CF 83-0993

Exhibit "3"