July 2, 2009

City of Calabasas
Attn: Planning Commission
100 Civic Ctr. Wy
Calabasas, CA 91302

SENT VIA EMAIL AND DELIVERED PERSONALLY TO PLANNING COMMISSION AT JULY 2, 2009 WORKSHOP

Comments offered on behalf of J&H Holdings, Owner of Los Angeles County Assessor Parcel Numbers 2072-024-005 with Respect to the City’s Proposed Amendments to Article III Chapter 17.20 of the Calabasas Municipal Code

Dear Chair Mueller:

On behalf of J&H Holdings, LLC, we offer the following comments on existing Title 17 (Development Code) and the proposed revisions thereto; specifically, we offer our comments at this time on Article III of that Title as follows:

17.20.020(B): Language in fifth line stating, “...on an existing lot” is superfluous and potentially prejudicial and overbroad. The intent of this section appears to be to govern subdivisions, multi-family, commercial and other similarly more intense projects. The section is potentially overbroad inasmuch as a single family residence that is proposed concurrent with a lot line adjustment may fall outside the exception provided in this paragraph. The LLA does not make the SFR project more intense. The construction of a single residence under all circumstances should be outside the coverage of this section. We recommend that the language “on an existing lot” be stricken.

17.20.050(A)(1): “Biotic Resources” should be a defined term. It is not currently defined in Chapter 17.90. Do these resources include all types of flora and fauna? Non-native invasive plant species and animals? If so, what is the justification for affording protection to those plants/animals? Additionally, this sub-section should be qualified such that these resources should be avoided unless encroachment into these areas would avoid greater environmental impacts and would be the environmentally superior alternative. Impacts to Biotic resources should be avoided to the maximum extent feasible and consistent with sound environmental planning. Currently the language in this section is mandatory and implies that avoidance may be the only alternative (mitigation not acceptable)—this may preclude alternatives that are environmentally superior and lead to greater environmental impacts. Suggest revising the language accordingly so that it is consistent with CEQA and local guidelines. Subsection (a)(2) immediately below this one appears to attempt to begin to define the term. Additionally, subsection (a)(4) seems to moot the need for this subsection in its entirety.
17.20.050(3): The use of language “Unacceptable Impacts” is strong medicine and may have significant legal repercussions. This may require the preparation of an EIR and the adoption of a statement of overriding considerations by the City Council or Planning Commission in accordance with CEQA for any project that proposes to have such impacts. Subsection (a) for example specifies that a “net loss of wetlands or riparian vegetation” is considered unacceptable. It is unclear what the term “net loss” refers to. It could potentially imply the quantification of loss after mitigation is implemented but, again, it’s not clear. The concept of net loss should be explained. Additionally, it’s not clear what “riparian vegetation” means as it is not a defined term. Oak trees (at least certain species) are generally considered “riparian” species even though they often are found outside of riparian habitats. The term “riparian” should be properly defined.

17.20.050(a)(7): Pursuant to California Civil Code section 815 it is unlawful to exact a “conservation easement.” We suggest instead that where a development project impacts habitat areas that applicants be provided options with respect to mitigation. For example: Loss of sensitive habitat might be mitigated by the applicant doing any one of the following: 1. Granting the City or a City-approved agency a conservation easement; 2. by paying an in-lieu mitigation fee based on the quantity of habitat impacted or; 3. by replanting the impacted plant species off site at a ratio of 1:1. By providing the applicant with choices, the City doesn’t run afoul of section 815. We would suggest mechanisms in the code that not only allow conservation easements to be used as mitigation but also the code should separately provide incentives for the granting of conservation easements. This would incentivize the granting of such interests and expedite the City’s General Plan target goal for Open Space acreage acquisition. Additionally, the terms “Sensitive habitat areas,” “Sensitive habitats,” “Sensitive biotic resources,” “Significant biotic resources,” and “biotic resources” are all terms utilized in 17.20.050 and all terms seem to be used interchangeably. It seems that there are at least 2 actual resources being referred to here (not 5 different types). We suggest that the terms “biotic resources” and “Sensitive Habitat Areas” be used and defined and the other terms be stricken and replaced accordingly with one of the two defined terms. Of special importance is the term “sensitive habitat areas” as those resources are currently mapped and are afforded greater protections under Title 17 yet that term remains undefined in 17.90.

17.20.060(4)(a): This provision unreasonably and unlawfully places the burden on a project applicant to mitigate impacts not created by the applicant/applicant’s project. For example, the recently adopted amended General Plan notes that the City currently does not have enough parks or open space to serve its “existing” residents. Read literally, this subsection would preclude (require denial of) any development projects from being approved until the City acquired adequate open space and parks. Clearly, the City cannot place this burden on an applicant for a single family dwelling or any other project for that matter. The fact that the “baseline” of conditions is substandard may be problematic for the City and its budget; however, it would be improper for the City to ask a project applicant to remedy this deficiency. This section should be stricken as subsection (b) moots the need for it and contradicts it expressly.
17.20.060(b): It is unclear what is meant by “basic development intensity defined in the zoning map.” We presume that this means, for example, that if a lot is HM zoned with a density of 1du/10-40 acres, and assuming General Plan goals were not being met, that a subdivision applicant could only apply for a maximum density of 1du/40 acres? Or is the entire range of density (10-40 acres) deemed “basic”. This is unclear. There are pending subdivisions in Calabasas currently and it is unclear what effect this provision would have on them. Many of these projects have been in queue for several years; issues of fairness to such pipeline projects exist.

17.20.060(5)(a): This provision is problematic inasmuch as it probably does more to create neighbor conflicts than to resolve them. It encourages NIMBYism and foreseeably will create a situation where these conflicts are played out in public hearings. We do not believe that the City wishes to be the creator or the arbiter of such conflicts. Fences and trees work well in affording privacy as do curtains, shudders and deck planters. Neighbors should be encouraged to use diplomacy on their own and municipalities should refrain from paternalism as much as is prudent and feasible.

17.20.070(A)(3): This section is very subjective. Architecture is art and involves highly subjective tastes. It is freedom of expression. The City should refrain from dictating to architects or residents how they can or can’t design a home. Implementation of this section will likely lead to overly homogenous neighborhoods (i.e. cookie-cutter tract homes); additionally, professional planners are not best suited to conduct such analysis.

17.20.080: All development projects are required to be planned and constructed consistent with the Los Angeles County Fire Code. This section should be stricken as it is inconsistent with the Fire Code. Fire Code and regulations in most instances (excepting large subdivisions) do not require 2 points of ingress and egress to a development. Granted, this section notes the ultimate authority of the Fire Department in this respect; however, it should simply be explicitly stated that access shall conform to FD standards. Also, limiting the development of an SFR to one driveway (which would be the case in most instances as the Fire Department would not “require” 2 access points in most cases), is arbitrary and capricious. This provision is overbroad in that it proscribes the construction of any driveway not deemed necessary by the City for Fire Safety. There is no good reason behind this proscription. This analysis should be conducted on a project by project basis.

17.20.130(A)(7): Not all driveways are required to be Fire Department compliant. The Fire Department, as stated above, normally requires only one access point. This section is overbroad inasmuch as it would propose access requirements in excess of that required by the Fire Code/ Fire Dept. and would require implementation of measures that are unnecessary, excessive and potentially environmentally damaging. E.g., where a resident has an existing driveway, said resident may wish to keep that driveway intact (that development being legally permitted and vested). This provision could be interpreted to require either the improvement or abandonment of that access point. As the right to the driveway is vested, it cannot be required to be abandoned and alternatively, to require that driveway to be improved may result in significant impacts to nearby protected
habitat areas or historic resources for example. In this particular example of a “legal, non-conforming” 15’ driveway through an oak woodland, a better solution might be to construct a second and new Fire Department access road that can be constructed per Fire Code with less significant environmental impacts, while not widening the existing driveway.

17.20.130(A)(10)(a): This subsection requires that an access road be “publicly accessible.” This implies that access roads and driveways must be “public” in nature (grant of public easement or dedication of right of access required by applicant?). We suggest revising to clarify that the intent to make roads accessible to a 75,000 lb. Fire Department ladder truck per Fire Code. Note: this section and others like it simply reiterate the Fire Code Provisions. The regulation of these activities by the City is unnecessary as the Fire Department already handles these matters.

17.20.140 (B): The existing code and the revised code remain unclear as to how exactly heights are measured. The code states that height is measured from the lowest point of grade, existing or finished as the case may be, to “an imaginary plane located the allowed number of feet above and parallel to [that point of] natural or finished grade.” A plane is arrived at by connecting a minimum of three points in space. It is unclear where these points of origin are taken from (i.e., points at grade). Is this a plumb line measurement from the grade at the exterior walls to a point directly above creating a point of origin for the plane? What happens over uneven ground where grade transitions in a non-uniform manner? E.g., on a downhill slope over uneven ground is grade presumed to transition uniformly from the highest to lowest point in order to form the beginning point for the plumb line measurement? Figure 3-3 on page 201 seems to indicate that in just such an instance, height is measured from “average [natural] grade” which is derived by taking the highest point of grade and the lowest point of grade at the exterior walls and then measuring 25-35’ from that point thus creating a “flat” plane where are points within that plane are equidistant from that grade elevation. Figure 3-3 shows a plane that is in fact NOT parallel to existing or finished grade but in fact parallel to a chosen “point” at natural or finished grade as the case may be. We would suggest that the City revise this section and Figure 3-3 to provide greater clarity and detail as to precisely how height is measured.

17.20.150(B): Performance Standards for Hillside Development

Subsection(1)(a): This section suggests that on-site balancing of grading is only appropriate on slopes that are 10% or less. Only small amounts of earth may be balanced or redistributed over these nearly flat areas. Limiting earthwork balancing to these areas inevitably sends most of the earth on hillside development projects to landfills which requires significant hauling by dump trucks. The existing Code and General Plan Policy IV-31 (Soils Conservation) currently encourages balancing and this section appears to be inconsistent with the General Plan. The result of limiting balancing to areas of 10% or less will be as follows: Creates the potential for: 1. Increased truck traffic on local and non-local roads and highways affecting levels of services for the same; 2. Increased fugitive dust and air pollution from truck transport; 3. Increased carbon footprints from
the fuel that is required to be spent to move the trucks leading to increased potential for greenhouse gas impacts; 4. Decreased potential for re-use of grading spoils for on-site aggregate to be used in driveways, walls, home construction, landscaping and visual screening berms, and other beneficial reuse. Overall, disincentivizing on-site balancing will create greater off site impacts which will have greater impacts on the environment than on site balancing and reuse. This section does not provide flexibility to allow the assessment of the relative impacts of balancing vs. export. The Development Code and this chapter specifically should incentivize balancing and reuse.

Subsection(1)(c): The term “Major” should be defined.

Subsection(2): The terms “Habitat linkages” and “wildlife corridors” should be specifically mapped, defined and limited to prevent subjective assessment and inconsistent policy application.

Subsections (9) and (13): These subsections appear to apply only to new subdivisions. These sections should be in Article IV accordingly. Neither are appropriately applied to single family developments.

Subsections (16) and (21) are wholly subjective and do not provide applicants for development with any meaningful guidance. Same comments as stated above regarding 17.20.070(A)(3).

Subsection (C)(2): The term “Ridgeline” should be clearly defined. That term is not defined currently in the code. Criteria should also be provided to clarify what landforms may properly be characterized as “ridgelines.”

Thank you for your time and consideration in this matter.

Best Regards,
Schmitz & Associates, Inc.

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