

ATTACHMENT A

LAW OFFICES OF  
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Mayor Bogaard and the City Council  
Pasadena City Hall  
117 E. Colorado Blvd. 6th Floor  
Pasadena, Ca. 91105

Re: Madia Street vacation<sup>1</sup>

Post-It® Fax Note	7671	Date	12/19/05	# of pages	9
To	BONNIE HOPKINS	From	MARTIN PASTUCKA		
Co./Dept.		Co.			
Phone #		Phone #	744-4233		
Fax #	744-4757	Fax #			

Dear Lady and Gentlemen:

I represent eight families<sup>2</sup> adversely affected by this proposed street vacation. We have reviewed the latest agenda report dated December 19, 2005 in this matter and find it wholly unacceptable, as nothing is proposed which addresses the very important issues they have raised consistently at each and every public hearing held on this matter. After identifying several legal defects which inhere in these proceedings, we will propose conditions of

<sup>1</sup>Please note that this letter has not been delivered to Councilmember Madison, as he has recused himself.

- <sup>2</sup>Mr. Burt Barkelew - 1534 Linda Vista
- Susan and Robert Bishop - 1199 Madia
- Steve and Wendy Crump - 1200 Madia
- John Fisher - 1191 Madia
- Dick May - 1518 Linda Vista
- Sharon and Craig Miller - 1515 Linda Vista
- Chuck and Anne Parcell - 1205 Madia
- Joan Smith - 1204 Madia

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approval which must be attached to any Council action in order for the Council to be able to find that this street vacation is indeed in the public interest.

**LEGALLY DEFECTIVE ENVIRONMENTAL CLEARANCE**

The Staff has recommended that you find this action categorically exempt from the California Environmental Quality Act on the grounds that this constitutes a minor alteration to land. This totally ignores the important environmental effects which this action will have. The Madia neighbors have told the Planning Commission and the Council repeatedly that there is a prescriptive easement which leads from Madia Street down to the Arroyo which has existed for more than 80 years. If approved as proposed, access to that easement will be destroyed. There are also view impacts. My clients are in the habit of going down to the end of Madia Street and viewing the unobstructed view of the San Gabriel Mountains and the Arroyo which is afforded them by simply standing at the end of the street. Someone has already taken action to block this view by planting oleanders which have grown to a height of five feet.<sup>3</sup> Finally, 14 on street parking spaces currently available to the Madia Neighbors will be removed.

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<sup>3</sup>We know that the City of Pasadena did not do this planting, as the City never plants oleanders because they are poisonous. We also know that none of the Madia Neighbors did.

A categorical exemption is not appropriate when there are adverse environmental effects which flow from implementing a project. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Cal. Code of Regulations 15300.2. In this case, vacating this easement will result in the loss of a view, the blocking of an 80 year old prescriptive easement, and the loss of 14 on street parking spaces for the Madia Neighbors. A categorical exemption is totally inappropriate.

The City Council cannot take action without a valid environmental clearance. A mitigated negative declaration is the only legally correct environmental clearance for this project.

**NO FINDING OF PUBLIC INTEREST**

In light of the obvious defects in the proceedings to date, there is no substantial evidence in the record to support the proposed finding that this vacation of the easement is in the public interest. Indeed, the staff has been struggling with this and has only been able to come up with the specious argument that the trash trucks will no longer have to back down Madia Street. The staff report erroneously includes the dollar amount of the

improvements the Quinns will make in an effort to justify the proposal. The Quinns are required to mitigate the impact of their project, and these conditions of approval are proposed for that purpose. The value of this work cannot be used to support a finding of public benefit.

**A. Violation of the Surplus Real Property Ordinance.** It is not in the public interest to sell City-owned land for a song. In disposing of surplus land, "unless some extraordinary and overriding public benefit is identified and obtained in consideration of the transaction", the City is required to "seek the highest monetary return, consistent with the interest of city and community needs." (P.M.C. Section 4.02.011).

In order to take advantage of an exemption in the Surplus Real Property Ordinance for de minimus land transactions, the staff erroneously concludes that 8300 square feet of prime residential property in the Linda Vista area of the City with a view of the San Gabriel Mountains and the Arroyo has a fair market value of less than \$1000. This is ludicrous on its face. The Surplus Real Property Ordinance requires that any transaction such as the one at issue "must be consistent with the findings of the [City Council] that an extraordinary and overriding public benefit will be achieved". (P.M.C. Section 4.02.030. No such finding has been made here, nor could it be. The only benefit to

be derived from this proposed transaction is private, and inures to a single landowner.

The analysis used to reach this conclusion is faulty. The fact of the matter is that the Quinns do not now, nor have they ever had the right to use property in the street due to the existence of the easement. They will now have fee title. The value added to their property holdings far exceeds the simple fair market value of the 8300 square feet. A unique private gated compound which exists nowhere else in the City will be created as a result of this transaction.

Unless the Quinns are required to pay the fair market value of the 8300 square feet of land which they will receive at the closing, the finding of public interest is highly suspect.

**B. ON STREET PARKING ELIMINATED.**

The Madia Street Neighbors now have use of 14 on street parking spaces which are proposed to be removed by this proposal. One for one replacement of such parking spaces must be provided by the applicant in the surface parking lot proposed to be constructed at 1164 Madia Street.

## INADEQUATE SAFEGUARDS FOR ACCESS TO THE "QUINN GARDENS"

The staff report merely attaches a summary of the "covenant" which the Quinns will allegedly enter into with the neighbors. Unless and until there is a mutually agreed upon draft document attached to the agenda report, there is no safeguard whatsoever that the access to the end of the street which the neighbors now enjoy will be protected. It is clear that the right given to the neighbors as described in Exhibit D is significantly less than they enjoy now. The proposal is to simply give them a key to the gate but the right would be personal to the owner. That means that eventually through sale or death of the property owner, this right will be extinguished. This is unacceptable.

The correct solution to this is to require the establishment of a Madia Street Homeowners Association, so that the Madia Street neighbors retain their access to this previously public property. This is the only way to assure that the impacts are mitigated sufficiently. There would be covenants, conditions and

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"Please note that this also violates an existing City policy against gated compounds, most recently enforced at Madre Villas in East Pasadena, where the following condition of approval was attached to a subdivision approval:

"Entry gates, pilasters or significant architectural elements shall not be erected at the main entrance of the project site to differentiate this project from the surrounding residential neighborhoods."

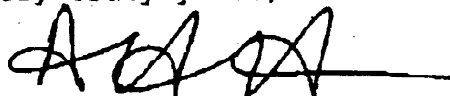
restrictions recorded which would denominate The Quinn Gardens as common property which the Madia Neighbors have the exclusive right to use, and such rights would be a part of the bundle of property rights that one would buy if one purchased one of the homes of the Madia neighbors, just as it is now in the purchase of a condominium. This is the only way to adequately protect the access rights of the Madia neighbors, and unless such a requirement is made a condition of approval to this street vacation, it is not legally possible to make a finding that this street vacation is in the public interest.

**AMENDED EXHIBIT D**

Attached hereto is an amended Exhibit D which incorporates all of the necessary changes to the approval of this proposal. It has been provided to counsel for the Quinns, Scott Jenkins.

Thank you for your attention to these important issues. We look forward to presenting our case to you at your meeting tonight.

Very truly yours,



Ann Higginbotham, Esq.

Attorney for the Madia Street  
Neighbors

cc. Cynthia Kurtz

Nicholas Rodriguez

Clients



## EXHIBIT D

The applicant shall create at his expense a homeowners association or equivalent which shall record covenants, conditions and restrictions to the effect that the Madia Street Neighbors [ eight families listed] shall have access to Quinn Gardens. Such access shall run with the land and shall not be a mere personal property right. The CC&R's shall provide at a minimum for the following:

1. One for one replacement of the 14 on street parking spaces on Madia Street to be removed as a result of the construction of the cul-de-sac. Such parking shall be provided in the surface parking lot to be constructed as a part of the construction ongoing at 1164 Madia street. The Madia Street Neighbors shall have reasonable access to such parking on the terms and conditions specified in the CC&R's, but in no event shall such access be only upon consent of the Quinns.

2. Restoration of the prescriptive easement area from Madia Street down to the Arroyo at such time as the hillside is restored with funds received from FEMA for storm damage. Keys to any gates which have been constructed as of December 19, 2005 blocking access to such prescriptive easement shall be provided to the members of the Madia Street HOA with reasonable terms and conditions for their use.

3. Liability provisions calling for Madia Street HOA to assume liability for the area known as Quinn Gardens ; and indemnity by any of the Madia Street HOA members for use of the space in violation of any of the terms and conditions specified in the CC&R's.

4. Reasonable usage rules, including without limitation: rules regarding days and hours of usage; group size and number of guests; *reasonable* limitations on use of tobacco, alcohol and food consumption; no firearms, pets littering, amplified sound or unsupervised children, and other reasonable rules to be included in the CC&R's.

5. Entry gates, pilasters or significant architectural elements shall not be erected at the western edge of Quinn Gardens to differentiate this project from the surrounding residential neighborhood. This condition is imposed to comply with the Pasadena Zoning Code, which prohibits gates and fences in a front yard. It is also imposed to comply with existing City policy forbidding the creation of gated compounds in the City.

6. Landscaping shall be done in such a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street.