



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: October 16, 2012
Placement: Departmental
Estimated Time: 1.5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: Glenn Russell, Ph.D., Director, 568-2085
Contact Info: Alice McCurdy, Deputy Director, 568-2518
SUBJECT: **Appeal of the Park Hill Estates v.2 Project filed by Marc Chytilo on behalf of the San Antonio Creek Homeowners Association and the Channel Islands Chapter of the California Native Plant Society, Second District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: County Public Works

Recommended Actions:

Consider the appeal filed by Marc Chytilo on behalf of the San Antonio Creek Homeowners Association and Channel Islands Chapter of the California Native Plant Society (Case No. 12APL-00000-00015) of the County Planning Commission's approval of the Park Hill Estates v.2 project, Case No. 10TRM-00000-00001.

Your Board's action should include the following:

1. Deny the appeal, Case No. 12APL-00000-00015, thereby affirming the County Planning Commission's approval of the project, case number 10TRM-00000-00001;
2. Make the required findings for approval of the project, including CEQA findings, as provided in Attachment 1 of this Board Letter;
3. Adopt the Proposed Revised Final Mitigated Negative Declaration included in Attachment 3 to this Board Letter and adopt the mitigation monitoring program contained in the conditions of approval; and
4. Grant *de novo* approval of Case No. 10TRM-00000-00001, subject to the conditions of approval included in Attachment 2 of this Board Letter.

Alternatively, refer back to staff if your Board takes other than the recommended action.

The project site is located at 4700 Via Los Santos in the Goleta area, 2nd Supervisorial District. The applications involve AP No. 059-290-041.

Summary Text:

Marc Chytilo timely filed an appeal on September 17, 2012 of the Park Hill Estates v.2 project approved by the County Planning Commission on September 5, 2012 (Case No. 10TRM-00000-00001). The appeal was filed on behalf of the San Antonio Creek Homeowners Association and the Channel Islands Chapter of the California Native Plant Society. The Park Hill Estates v.2 project includes the subdivision of a 14.87-acre property zoned 1-E-1 into 16 residential lots (15 market rate lots and one lot dedicated for an affordable rental unit), one common open space lot for a detention basin, and one lot covering an existing private road. The currently proposed project reviewed in 2012 after the Board of Supervisors appeal hearings also includes the construction of two new private roadways to provide access to the subdivision off of Via Los Santos and San Antonio Creek Road and the funding and construction of off-site improvements to the lower portion of San Antonio Creek Road to improve its functionality as an emergency evacuation route.

Background:

A Draft Mitigated Negative Declaration (MND) was prepared to evaluate the impacts of the project, including the future buildout of each residential lot, and circulated for public review on June 17, 2011. In order to address the comments raised by area residents on the adequacy of the MND and impacts of the project, the applicant made several changes to the project. These included the elimination of two residential lots (from a total of 18 to 16) and a resultant increase in average lot sizes, a reduction in the maximum building heights for the two westernmost lots from 25 down to 22 feet, and an increase in the setbacks in between residences to a minimum of 40 feet. The Proposed Final MND analysis concluded that the project would result in significant but mitigable impacts in the following issue areas: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Fire Protection, Geologic Processes, Land Use, Noise, Public Facilities, Transportation, and Water Resources. The project was presented to the County Planning Commission for consideration on December 5, 2011. After two hearings, the Planning Commission directed staff to prepare a focused Environmental Impact Report on Fire Hazards and Biological Resources. The applicant appealed this determination to your Board of Supervisors. After two appeal hearings, your Board voted 2-2 on whether further environmental review was required, which resulted in a No Action vote, meaning both the appeal and the Planning Commission's determination were neither upheld nor rejected. The applicant subsequently made further changes to the project. These included: lowering the pad elevation on Lot 10 by two feet; reducing the building height on that lot from 22 feet to 18 feet within 120 feet of the western property line to address neighbor concerns about visual impacts; and funding up to \$120,000 to construct improvements to the lower portion of San Antonio Creek Road to enhance its functionality as an emergency evacuation route. Improvements include widening the narrow portions of the roadway (currently measuring approximately 14 feet wide) up to between 16 and 18 feet in width, repaving the roadway, drainage improvements and vegetation clearance. The revised project was presented to the Planning Commission for their reconsideration, along with a Revised Final MND and revised Findings and Conditions of Approval. The Revised Final MND included revisions to the biological resources section in response to comments on biological resources, as well as revisions to the visual resources and fire protection sections to address the project changes. At the hearing of September 5, 2012, the Planning Commission voted 3-2 to approve the revised project and find that the Revised Final MND was adequate environmental review under CEQA.

Appellant Issues and Staff Responses:

The appellant, Marc Chytilo, submitted a letter (included as Attachment 4 of this Board Letter) along with the application appealing the September 5, 2012 Planning Commission approval of case number 10TRM-00000-00001, and included three specific issues as reasoning for the appeal. Staff responses are presented after each appeal issue, below:

Appellant Issue #1: The appellant states that an EIR is required for this project pursuant to the California Environmental Quality Act because there is substantial evidence supporting a fair argument that the project may have potentially significant impacts. The appellant provides a bulleted list of what he asserts as constituting substantial evidence in this case, including: a) a letter prepared by David Magney addressing biological resource issues; b) comments made by County staff and Planning Commissioners; c) findings that were made by the County Planning Commission related to the 2007 subdivision approved on the same property; d) the failure of the off-site roadway improvements on San Antonio Creek Road to meet County Fire Department's road width standard; e) opinions by area residents as to impacts of the project; and f) asserted inconsistencies of the project with Goleta Community Plan policies. These six claims are discussed sequentially below.

Staff Response to Issue #1: (a) The appellant identifies the letter dated December 1, 2011 submitted by David Magney, consulting biologist for the San Antonio Creek Homeowners Association, as providing fact-based opinion that the project may result in significant impacts to biological resources including native grassland habitat, wetland habitat, raptors, invertebrate species and non-vascular plants (i.e. lichens). The Planning Commission, in considering the information submitted by David Magney and the environmental analysis contained in the Mitigated Negative Declaration (MND) concluded that the Revised Final MND and mitigation measures contained therein were adequate under CEQA and that there was no substantial evidence that the revised project would result in a significant impact on biological resources. Pursuant to CEQA Guidelines Section 15384, substantial evidence is defined as follows:

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Relevant comments from David Magney were addressed in the Revised Final MND. In addition, they were responded to in a Planning Commission comment letter dated January 23, 2012 from Mark de la Garza of Watershed Environmental who had performed the biological surveys on the site; the letter refuted many of the criticisms raised in David Magney's comment letters as to the scope of the biological survey work, including in regards to the potential for sensitive lichen species to be present on the project site. David Magney did not conduct any surveys of the site documenting the presence of rare lichens, invertebrate species, or wetlands but rather simply suggests that they could be present. Speculation and unsubstantiated opinion do not constitute substantial evidence. Lastly, P&D's staff biologist, who surveyed the site and

conducted multiple field visits, testified at the Planning Commission hearings regarding the adequacy of the biological survey work performed for the purposes of evaluating impacts under CEQA.

(b) The appellant indicates that comments, conclusions, and opinions of County staff and Planning Commissioners constitute fact-based opinion that substantial evidence exists to support a fair argument of potentially significant environmental impacts. However, the appellant does not cite any specific comments or conclusions of staff or the Planning Commission. As defined above, opinions, without supporting facts and evidence, are not substantial evidence.

(c) The appellant references findings that were previously adopted for the 2007 Park Hill Estates project (12-unit residential subdivision) by the County Planning Commission, which included a statement that “the site would not be physically suited for the maximum density allowed by the site’s zoning (14 single-family homes plus accessory structures) due to site constraints.” This finding was specifically related to the 2007 project proposal and was based on that project’s provision of 1-acre lots and the need for a two acre on-site detention basin and restoration area. In considering the current 16-lot residential subdivision project, which includes smaller lots, the County Planning Commission made no such finding and your Board is not bound by past findings made for a different project on the subject property.

(d) The appellant claims that the proposed off-site improvements to the lower portion of San Antonio Creek Road would not meet County Fire Department requirements for minimum roadway width and that this constitutes substantial evidence that the project may have a significant effect on the environment. However, the County Fire Department testified at the September 5, 2012 Planning Commission hearing that the project meets all required County Fire Department standards applied to the project, including adequate water supply for fire hydrants and adequate widths and slope gradients for the two internal roadways (Cozy Drive and Cozy Way) serving the project, and that the proposed off-site improvement is not a required component of the project since it does not directly serve the project site. The applicant’s proposed roadway improvements to the evacuation route on the lower portion of San Antonio Creek Road, offered as part of the revised project, would improve the ability of that roadway to facilitate evacuation by widening the narrow portions of the road by several feet and therefore, while not required of the project, is valuable to the community. The Draft MND concluded that the project would not result in significant impacts with respect to fire evacuation even in the absence of the improvements to the lower portion of San Antonio Creek Road; the revised project includes these improvements, which only serves to further reduce impacts of the revised project on emergency evacuation.

(e) The appellant asserts that the opinions of area residents regarding the significant impacts of the project (including future buildout of the 16 residential lots) on the surrounding aesthetics, public and private views, community character, and open space values constitute substantial evidence that the project may have a significant effect on the environment. The appellant provides no specific opinions or substantial evidence to respond to. As discussed above, opinions, without supporting facts and evidence, do not constitute substantial evidence. However, the Planning Commission heard all of the public testimony on the project and reviewed all of the comment letters submitted by surrounding residents and concluded that the Revised Final MND adequately evaluated the visual and aesthetic impacts of the revised project and identified mitigation measures that would be applied to future residential development and that would reduce potential impacts to less than significant levels.

(f) The appellant identifies project inconsistencies with applicable policies of the Goleta Community Plan as substantial evidence to support a fair argument that the project may have a significant effect on the environment. Section 6.2 of the staff report originally submitted to the County Planning Commission (dated November 18, 2011 and included as Attachment 7 to this Board letter) provides a detailed analysis of the

project's consistency with applicable policies of the Goleta Community Plan, including those referenced by the appellant. Policy BIO-GV-14 states: *To the maximum extent feasible, areas of native grasslands shall be preserved.* Preservation of the on-site native grasslands, as called for in Policy BIO-GV-14, is not feasible given their scattered distribution throughout much of the site and the scope of the project with the density and number of lots requested and allowed for under State Bonus Density law. Development Standard BIO-GV-14.3 calls for on-site mitigation such as revegetation as necessary and Policy BIO-GV-15 calls for the protection of significant biological communities from fragmentation into small non-viable pockets. However, Development Standard BIO-GV-15.3 allows for off-site mitigation when onsite preservation/restoration is infeasible or not desirable in terms of long-term preservation. The project, as conditioned, would provide for off-site restoration of native grasslands due to insufficient area within the project site to support effective restoration. This represents a change from the 2007 approved project, which included use of the 2.2-acre detention basin for on-site restoration. However, the extent of grasslands has expanded since 2007 such that the detention basin parcel is no longer adequate in size to provide for the standard 2:1 restoration ratio. Additionally, the currently proposed project includes an active use area in the bottom of the detention area precluding its use as a restoration site. The off-site restoration approach would provide for a long-term, protected and contiguous grassland restoration area that is less disrupted by residential development and provides equal or greater ecological value than an isolated on-site restoration area. On the other hand, on-site restoration would result in a small pocket of native grassland isolated and fragmented from other biological communities. In addition, project conditions address limiting the scope of initial grading, which would prevent the complete loss of all on-site habitat during the initial infrastructure development. The planting of invasive plant species would be prohibited in order to help protect any remaining native vegetation left on-site. For these reasons, the project was found to be consistent with these Goleta Community Plan policies and development standards protecting biological resources.

Appellant Issue #2: The appellant states that the Mitigated Negative Declaration is legally flawed because it failed to consider the "project as a whole" and evaluate the impacts of the reasonably foreseeable residential development, and that the baseline used for evaluating impacts to biological resources was not properly based on existing physical conditions.

Staff Response to Issue #2: In regards to evaluating the whole of the project, the analysis contained in the Mitigated Negative Declaration (MND) clearly considers the effects of residential buildout of the site and the development of 16 single family dwellings. The analysis of visual and aesthetic impacts of the project included in Section 4.1 of the MND, which considers the impacts of the development of 16 homes at the square footages, building heights, and setbacks established confirms this. All of the other relevant sections of the MND analyzed the whole of the project in a similar manner.

In regards to the CEQA baseline, the Revised Final MND relied on the existing physical conditions at the time of the preparation of the MND against which to evaluate the potential impacts of the project. As discussed in the Planning Commission staff memorandum dated August 16, 2012 and included as Attachment 5 to this Board Letter, the Revised Final MND includes a detailed discussion of the biological resources present on-site and the survey work and accompanying impact analysis included in the Revised Final MND are adequate under CEQA. This was based on multiple biological surveys by the consulting biologist, Watershed Environmental (the most recent one being in 2010), as well as multiple site visits from the Planning and Development's staff biologist (December 2000, May 2003, July 2010, and March and April 2011). The April 2011 site visit conducted by the P&D staff biologist included a thorough survey of the grassland communities on the project site. While criticizing the biological analysis for failing to evaluate impacts to non-vascular plant species (i.e. lichens) and invertebrate species (i.e. snails), David Magney provided no substantial evidence to indicate that sensitive lichens and snail species are present on the project site and were

inappropriately omitted in the discussion of existing biological setting and impact analysis. On the contrary, Mark de la Garza submitted evidence to the County Planning Commission in a January 23, 2012 comment letter, confirming that none of the lichens observed at the nearby (and so comparable) Preserve at San Marcos property are considered rare, threatened, or endangered. Thus, the assertion that the MND is inadequate because it fails to account for rare lichens is not supported by substantial evidence. In regards to invertebrates, there is very little information pertaining to special status invertebrates (i.e. land snails) in the County. David Magney refers to a publication by Roth and Sadeghian (2003) concerning the land snails and slugs occurring in California, and includes a list of those occurring on the mainland of Santa Barbara County, but no information about the habitat of these species is presented or any evidence to indicate their likely occurrence on the project site. Thus there is no substantial evidence and none was submitted that rare invertebrate species exist on the project site, and there is no rationale for requiring surveys for these species or for concluding that the MND is inadequate for omitting discussion of these species.

Appellant Issue #3: The appellant states that the Planning Commission's findings for approval are not supported by substantial evidence.

Staff Response to Issue #3: The Planning Commission was presented with information during three hearings on the matter to support taking action to approve the project and adopt the findings for approval. This information includes: 1) the Revised Final MND and all of the public comment letters submitted on the Draft MND (Attachment 3); 2) the Planning Commission staff report dated November 18, 2011 which includes a thorough analysis of the project's consistency with applicable policies of the Comprehensive Plan and Goleta Community Plan (Attachment 7); 3) testimony from the County Fire Department and County Public Works Department regarding the project's compliance with their standards and requirements as well as the proposed improvements to the lower portion of San Antonio Creek Road to enhance its functionality as an emergency evacuation route; and 4) the Planning Commission staff memorandum dated August 16, 2012 (Attachment 6) which includes a discussion of the changes to the project and revised findings for approval that reflect the project changes. The Planning Commission's findings are based on substantial evidence and are adequate to support approval of the revised project.

Conclusion:

The appeal letter filed by Marc Chytilo incorporates by reference a comment letter submitted by Graham Lyons on the Draft Mitigated Negative Declaration (MND) dated July 18, 2011. This letter raises several points relative to the adequacy of the MND, including in regards to the analysis of aesthetic impacts and mitigation measures, biological resources, cultural resources, fire protection, recreation, and open space, among others. As discussed above, the project was revised after circulation of the Draft MND by reducing the number of residential lots from 18 to 16, increasing the setbacks in between homes from a minimum of 20 feet to 40 feet, and reducing the maximum building heights of the two westernmost lots down to 22 feet. These changes were in direct response to many of the comments raised in the Graham Lyons letter as well as other public comments received and served to ameliorate many of the concerns or criticisms raised. The MND was revised to incorporate these changes and respond to the comments received, providing further analysis and justification in support of the conclusions and selection of mitigation measures. In regards to the aesthetic impacts and the assertion by Lyons that the project results in significant impacts on public views and neighborhood compatibility, the analysis in the Proposed Revised Final MND concludes that the proposed lot sizes are consistent with the surrounding neighborhood and that the proposed setbacks combined with the proposed height limits and required design review by the South County Board of Architectural Review would ensure that impacts are reduced to less than significant levels. In regards to the biological resource analysis in the MND, the Lyons letter provides no substantial evidence to support his

assertions but rather refers to opinions and observations not supported by factual evidence. Nonetheless, the Proposed Revised Final MND expands on the analysis and discussion of biological resources in response to the comments raised. Similarly, the Proposed Revised Final MND expands on the analysis of fire protection and evacuation confirming that the reduction of two residential units and improvements to the evacuation route on the lower portion of San Antonio Creek Road would further reduce impacts in response to comments received. In summary, staff thoroughly reviewed this comment letter and revised the Mitigated Negative Declaration where appropriate to address relevant comments received. Refer to sections 4.1, 4.4, 4.5, 4.7, 4.11, 4.14, and 4.15 of the Proposed Revised Final MND for further detail in terms of addressing the comments contained in the Graham Lyons letter.

Based on all of the evidence in the record, the project (as revised and conditioned) can be found compliant with all applicable development requirements of the County LUDC and all policies within the County Comprehensive Plan, including the Goleta Community Plan. The Revised Final Mitigated Negative Declaration prepared for this project is adequate environmental review under CEQA and mitigation measures have been incorporated as conditions of project approval to ensure that potentially significant impacts are reduced to less than significant levels.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The costs for processing appeals are typically provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$643.00. P&D will absorb the costs beyond that fee, estimated at approximately \$3,800 (20 planner hours). This work is funded in the Development Review South Division on page D-138 of the adopted 2012-2014 fiscal year budget.

Special Instructions:

A Minute Order of the hearing and copy of the notice and proof of publication shall be returned to P&D, Attention: David Villalobos, Hearing Support. Hearing Support and Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Attachments:

1. Findings for Approval
2. Conditions of Approval
3. Proposed Revised Final Mitigated Negative Declaration
4. Appellant Letter, included in Appeal application, dated September 17, 2012
5. Planning Commission Action Letter, dated September 10, 2012
6. Planning Commission's Staff Memorandum, dated August 16, 2012 (includes project plans)
7. Planning Commission Staff Report, dated November 18, 2011

Prepared by:

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