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October 11, 2012

Chair Farr & Supervisors
Santa Barbara County
123 E. Anapamu St.
Santa Barbara, CA 93101

via e mail

Re: Park Hill Estates v.2
Hearing Date October 16, 2012
Agenda Item No. 3

Dear Chair Farr and Supervisors:

This Project was approved by the Planning Commission on September 5, 2012. That approval would have been final unless appealed. It was appealed by a new attorney for neighbors and by two "entities" one of which did not appear at the Planning Commission. The Project is consistent with the Community Plan and Zoning for the property and Housing Element obligations. The two issues that have surfaced since the January Planning Commission hearing were adequacy of environmental review on Biology and area safety/status of the San Antonio Creek connection with Tuckers Grove. An additional planning issue was the elevation of lot 10 in the northwest corner which was revised in the approved project to meet neighbor concerns and governmental concerns of the Goleta Sanitary District and Environmental Health Services.

Below are the salient comments as to those issues at the Planning Commission

Planning Commission Action:

First as to **Biology**

Cecilia Brown–

- "At the time we voted in January, I still had concerns about the biological impacts. Ms Mooney had received that day a letter from Mr. Magney which she did not have time to review. The bio resource issue was resolved to her satisfaction after the December hearing. She needed assurances. I feel more confident now that the review was totally adequate. Ms Mooney will you comment?"

Ms. Mooney

- "It comes down to the facts of the case—a 10-12 acre site with 3 acres of grasslands, we reviewed everything, and included a mitigation plan that requires restoration.
- I have read Mr.Magney's (3) letters, and reviewed the information in them and have come to the conclusion that essentially while there is a lot of information about sampling and criticism of the

County's procedures, there are no substantial facts offered to come to his conclusions. There is no additional information, he did not find any additional species, or more grasslands. I conclude that our analysis is adequate under CEQA. "

Second, as to the **Emergency Egress through San Antonio Creek Road** and Tuckers Grove, the following key comments were made:

Eric Peterson, County Fire Marshall.—when asked by Commissioner Cooney, his position on this project, he said

- "This project meets all County Fire Department standards. I've been in discussions with Planning & Roads as to this issue."
- "This project would not require any additional improvements to meet our standards. As has been stated many times, there is no nexus to this project to additional road improvements."
- Cooney asked his opinion of the proposed improvements, Peterson said, "Enhancements to that road, we see as a good thing. But again, it has no nexus to this project."
- Commissioner Blough asked him – "Is it safer for the residents to have this road widened to 16-18 feet?" Peterson said, "I would have to say "yes".

This project is in the second district with Supervisors Wolf recused, Cecilia Brown Planning Commissioner for the Second District took the lead and made the recommendation for approval as follows:

Cecilia Brown

- Mr. Nelson's road improvements make this a better project. The Fire Department said it is a better thing. Roads said it is a good thing as well.
- I think this is a superior project to the 2007 plan, not only for the grassland mitigation, but for the fire safety as well because we are getting the offsite improvement offered by Mr. Nelson.
- This project is not perfect, but I find that the MND is adequate.

The Appeal

The appeal seeks to further delay the project by an EIR on biology and the emergency egress issue. While further details are set forth on Exhibit 2, some of the essentials that make it clear that an EIR is not required are the following:

- The staff has properly prepared an MND, and the Planning Commission has approved it.
- This tentative map is consistent with the Goleta Community Plan which had an EIR that reviewed and contemplated this level of housing on this exact site. The Community Plan Master EIR adopted mitigation measures and overriding considerations as to the issues of biology and fire safety.
- The State Office of Planning and Research which generates CEQA guidelines states that the "substantial evidence of a fair argument" standard for considering an EIR or ND only applies at the first instance if there is no Master EIR. Here there is both a Master EIR and a certified MND for 12 homes on the site (in 2007). Consequently the issue is whether there is substantial evidence in the record to support the proposed environmental findings prepared by

staff. Not only is there substantial evidence to support those findings but, we contend there is no factually valid countervailing facts.

- A specific MND was certified for 12 homes (or 24 housing units with permitted second units) in 2007. That MND was certified and not challenged and thus is a baseline for reviewing further project changes, namely up to 4 more homes on the site in this plan. Cases cited below say this is a baseline on which you build for future project modifications.[1]
- The County has a dedicated staff biologist whose job is to sort the information provided by all parties on biology as to projects. Ms. Mooney determined that there is no evidence of a deficiency in the MND in this regard and the Planning Commission agreed with her.
- Both Roads and the Fire Department determined that there is no nexus to require any additional improvements of this project on the Tuckers Grove emergency egress as the Park Hill Estates v.2 project meets all Roads and Fire Department standards. No additional mitigation measure could be imposed under CEQA, as CEQA cannot be a basis for mitigations that are not otherwise lawful under the nexus test.
- Recent cases have determined that it is only to be analyzed for its impact on the environment; CEQA is not to be used to analyze the impact on the project of existing conditions such as the status of that emergency egress road. There is no meaningful purpose or end of a CEQA review on whether or not the County has adequately maintained the San Antonio Creek emergency egress road.

Additional Road Improvements

When this matter was before the Supervisors, we were advised by staff that Public Works had a work program of proposed road improvements to the San Antonio Creek Road that staff could not impose as a requirement, but it might be viewed favorably if we agreed to have the project fund those improvements. We conditionally agreed at that time if the project was approved by the Supervisors then, but that did not occur and the Supervisors voted 2-2 for more environmental review.

In subsequent discussions with County personnel, this issue surfaced again and we agreed to fund the improvements if the project received final approval in a timely manner. Those road improvements are now in the revised project description.

Before the appeal was filed, neighbors Mr. Danny Vickers and Mr. David Brown and Scott Brown asked to meet us, at which time we discussed a two stage road improvement contract by which neighbors would fund a second stage of improvements if they could raise the funds to do so. A memo of that September 11, 2012 meeting is attached as well as a September 12, 2012 follow-up email communication. (Exhibit 1)

On October 1, interested parties met onsite to further discuss this concept and challenges to certain areas of the road in widening it beyond 18 ft. or so.

In a subsequent County facilitation, it appeared neighbors had stepped away from this concept but that was the context of the onsite road meeting (see Exhibit 1).

[1] Benton v. Board of Supervisors (1991) 226 Cal.App.3d 1467; Abatti v. Imperial Irrigation District (2012) 205 Cal. App. 4th 650

Since neither the project road fees nor any funds can be used for this road improvement because this road is not on any GTP list, the voluntary Park Hill project funds are the last best chance to improve this road with specifications identified by Public Works but at private expense.

Those two identified neighbors have appealed through organizations they are associated with. Their goal of requiring an EIR and forcing the project to return to the 2007 approval would guarantee that these private road improvements funded by the project will not happen.

The neighbors concerns that have yielded a processing time of 890 days have changed substantially over time with the one point of continuity being that they opposed the rental casita (affordable unit) built per the Housing Element. By shifting their focus at the end to road improvements to San Antonio Creek Rd. and now threatening to stop those road improvements and this project via additional review exposes how disingenuous those neighbor positions have been.

The neighbors' who still oppose this project want to block the small bonus density and the rental casita (affordable). If they do so, this project becomes a statewide poster child for exclusionary zoning. When I told the HCD representative about this case and the County's actions to date, he stated "I would not discourage litigation".

The burdens of exclusionary zoning that violate state mandate fall on the County at large and is not earmarked or sequestered to that neighborhood or that district alone. Our whole development team has been involved in infill projects in eastern Goleta over the last 25 years and in each case once built projects are quickly integrated and accepted into the neighborhood. That will be the case here too if Park Hill Estates v.2 is allowed to emerge and become the well planned project that is the collective effort of many respected team members.[2]

Conclusion

This project is consistent with the Community Plan, the EIR for the Community Plan, and the Housing Element. It would have been approved 2 years ago, had there not been neighborhood opposition. Opposition centered on the very policies that the County now requires of new developments that did not apply 40 years ago when other properties were developed in that area.[3]

The two closest neighbors have raised the perception that the area at large is upset with the project, when in fact they themselves are most impacted, and they have actively tried to fuel opposition by one-sided communications to neighbors.

Ultimately, neighbors concerns focused on the lower stretch of San Antonio Creek Road, where it connects with Tuckers Grove, and concerns for the road safety in times of emergency egress. This project

[2] We made a full project presentation to the Supervisors on May 1, 2012. No on-site design issues remained as items of controversy at the Planning Commission hearing of September 5, 2012 after we dropped the pad 2 feet to accommodate the neighbor to the west who requested that action.

[3] The County has vastly exceeded the State Law time limits for processing the project under the Permit Streamlining Act and other applicable laws. We incorporate by reference in to the Administrative Record all of the project submittals and communications with the County during the permitting history of the project.

now provides funds to improve that road per public works specifications; no other County funds can be used on that improvement. If neighbors still seek to block the project, they are blocking those road improvements too, thus exposing their true intensions.

Neighbors have repeatedly said that the twelve lots approved in 2007 are perfectly fine, and they stated in 2007 hearings they expected those all to have second units, so there would be 24 homes there. The fifteen market rate lots and affordable lot are designed to not accommodate second units, thus as two Planning Commissioners observed, this project could be less dense than the 2007 plan which is acceptable to neighbors, and it also has the road improvements which would not be part of the 2007 plan implementation.

This is the end of a 40 year earnest and well intentioned effort to have a fine project of low density on this infill site. It deserves approval. Thank you.

Very Truly Yours,

Jeffrey C. Nelson

CC: Dr. Glenn Russell
Office of CEO
Office of County Counsel

Exhibit 1

Memo: Follow up to meeting with Brown, Vickers of September 11, 2012, JC Nelson

San Antonio Creek Road Emergency Egress Road Improvement Concept

Mr. Brown (David & Scott), Mr. Vickers, Mr. Nelson (Jeff & Jason) met on September 11, 2012 at the office of Mr. Brown as requested by Mr. Vickers to discuss the concept of road improvements on San Antonio Creek Rd. No appeal had been filed at this point on the Park Hill Project. Following that meeting, Jeff Nelson wrote up the concept of having two separate funding for road improvements as was discussed in the meeting.

There could be two separate scopes of work, funding sources and improvement contracts as follows:

First contract:
The Park Hill Estates v.2 development project completes the agreed improvements costing up to $120,000 as set forth in the staff report scope of work and related estimate that public works prepared. A civil contractor will be employed in conjunction with the project development to complete these services, with the County action being an encroachment permit and review after completion of the improvements.

Second contract:
Certain neighbors, Brown, Vickers would like to raise funds by contributions of neighbors in the area to do additional improvements they perceive will further enhance the emergency egress attributes of that road.

To assess the cost effectiveness of different levels of improvements, it is proposed that various interested parties, including contractors and County roads representatives meet onsite to roughly assess additional improvement opportunities and related costs. It is our understanding that the neighbor's representatives will or may seek to:

- Create a scope of work and cost associated with that scope of work for additional roadway improvements.
- Raise funds or get pledges of funds from neighbors for these roadway enhancements.
- Set up a trust fund account such as at a local bank trust department under which the funds will either be dispersed for the second contract for road improvements or return to the party who donated the funds within a specified period of time.
- Contract with a civil engineering contractor for this second scope of work.
- Obtain a separate road encroachment permit for the County for this second scope of work.
- Manage the contract with the second scope of work to completion.

Independently, it was recommended that the neighbors and developer petition County Public Works to have the lower San Antonio Creek Road area included in the County's list of maintained roads. At the September 5, 2012 Planning Commission hearing, Mr. Robertson of Public Works stated that after the project funded first round of road improvements, the road would then be in good enough condition that it would be a candidate for the County to take it into its maintained roads list.

Follow Up: The on-site road meeting discussed on Sept. 11 occurred on October 1, 2012.

Jeff Nelson

From: Jeff Nelson [jeff@jeffnelsonlaw.com]
Sent: Wednesday, September 12, 2012 12:34 PM
To: 'jim@lashconstruction.com'; 'Robert Flowers'; 'Robertson, William'; 'Stewart, Bret'
Cc: 'Jason Nelson'; 'Danny Vickers'; 'davelb4@cox.net'; 'Scott Brown'
Subject: San Antonio Creek Rd- Park Hill

Greetings all,
This is a request that we all meet on the San Antonio Creek Road-Tuckers Grove emergency access road. As our schedules allow, perhaps next Thursday or Friday (20th, 21st). The purpose would be to productively assess improvements along that stretch of emergency access road to assess what further level of improvements are practical above the base of improvements identified by roads in its work program.

The background is that roads identified base improvements that they would like at $95K-$120K and we agreed that the Park Hill Estates project would fund that when it goes forward so long as the final County approval was by a specified time. The PC approved the project last Wednesday.

Yesterday we met with neighbors who are interested in exploring raising additional fund from neighbors that would go to additionally improve that road beyond what we will do. That takes an onsite assessment of what is practical and a general sense of what the cost would be for different elements. In speaking to Bob Flowers, he thinks these are the proper people in such a meeting. The interested neighbors who would be hands on in fund raising would be at the meeting also and are shown as cc's.

I think in theory we would end up with a construction contract with a civil contractor for our components- stage I improvements, and if neighbors raise funds they would put that in an escrow account to disperse it to the contractor for stage II improvements.

We think this can be a very productive time spent. Will and Bret you can decide if you both want to be there or if one is to cover it. Perhaps we should start with a County person starting with suggesting a time next Thursday or Friday. When the meeting is set we could all park in Tuckers Grove at the bottom of the road.

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From: Jeff Nelson [mailto:jeff@jeffnelsonlaw.com]
Sent: Tuesday, September 11, 2012 4:34 PM
To: 'Danny Vickers'; davelb4@cox.net; 'Scott Brown'
Cc: 'Jason Nelson'
Subject: RE: PHE - meeting Tues 1:30- Update

Danny, David and Scott,
I called Bob Flowers after our meeting and he agreed to be a point of connection with others we had mentioned. His recommendation that the other parties besides us would be as follows:

- Jim Lash of Lash Construction instead of Louis Venegas because Lash would be speaking more responsibly as to actual estimated prices.
- Brett Stewart and or Will Robertson from County Roads as they decide to man it. Brett Stewart was the one involved in the work program and Will Robertson is familiar with the issue from the Park Hill permitting perspective.

Let's try to target something mid next week, dependent on the schedules of others. If this looks good to you we will try to get all of those connected via email. Bob Flowers said he would call the contractor first to explain what is proposed.

Thanks for a productive meeting.

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Exhibit Two

Goleta Community Plan EIR

This project is covered by the Goleta Community plan EIR which is the master EIR. Per the CEQA guidelines, "**fair argument <u>does not apply once a Master EIR has been prepared if the Master EIR can be construed as the "original EIR" for a subsequent project.</u> In other words, if the project is within the scope of the Master EIR."**

Clearly this project is within the scope of the original Goleta Community Plan Master EIR (which was not the case for all the church/ synagogue CUP's in the area.)

Applying additional scrutiny to these last 4 units in this project, after 12 units have a certified EIR and neighbors embrace the safety of 12, is unjustified. Indeed these last 4 units have been anticipated by County Planning and environmental documents.

The County has liability for any impairment to the project, including delays, from its handling of the road through Tuckers Grove, if indeed that issue impacts this property.

Additional Relevant CEQA Guidelines Provisions

This an "Infill Site" – Public Resources Code, Section 21061.3

This Infill Site is in an "Urbanized Area" – Public Resources Code, Section 21071

This is a project that is "Consistent with a Community Plan or Zoning" – CEQA Guidelines Section 15183

OFF-SITE BIOLOGICAL MITIGATION

The property has had small fragments of a native grass, Purple Needle Grass, in varying amounts of area, since the Property was first processed for development with the County in 1997. Mark De la Garza of Watershed Environmental, has been a consistent biological expert reviewing the site over that time, as per his reports in the Administrative Record. Purple Needle Grass is a native grass, but is not a protected species. An owner could disk the Property to enhance fire safety at anytime, and could lawfully create a site that had no Purple Needle Grass.

In the 2007 approved Plan, there was less than 2 acres of onsite grasslands. The County required a 2 to 1 mitigation onsite which resulted in a Retention Basin having native grasses as well as a portion of 5 backyards. These backyard areas were to be protected with a tall fence so that owners could not have access to that portion of the Property, nor did the residents have use of the seasonal detention basin, which could serve as a recreational open space.

In its natural state, Purple Needle Grass is a dry flammable grass in summer as it naturally receives no irrigation during the six plus dry months in the area. Thus, re-creating a natural stand of Purple Needle Grass is to create a stand of grass that is inherently flammable during fire season, if left in its natural state.

The County required additional studies of the site during processing and Watershed Environmental determined that there were additional fragments of Purple Needle Grass. Only stands of a certain size are recognized under County standards requiring mitigation. The County included smaller stands than it had in 2007 in creating a mitigation requirement of above 3 acres, with 2 to 1 mitigation results in 6 acres, thus consuming the Retention Basin and several residential lots, if retained on the site. This would be an inconsistent standard under State Bonus Density Law, as it would limit housing on a basis other than a health and safety standard.

Additionally, we contacted a statewide CEQA expert who is the editor of the CEQA Section of Miller and Starr's real estate and environmental publication, as well as the editor of a CEQA blog. He stated that from a CEQA mitigation standpoint, 1 to 1 mitigation should be adequate. A preserved and maintained mitigation stand would be more sustainable than an unmaintained stand which is the current status.

Mark De la Garza opined that a small mitigation stand in this existing neighborhood was impractical, as any small wildlife which it would attract would be preyed on by neighborhood dogs and cats, thus making it a "biological sink".

We contacted various local wildlife protection organizations about off-site arrangements. These had been suggested by Mr. De la Garza. Inquiries concerning the open space parcel at More Mesa, the County Parks open space parcel at The Preserve at San Marcos, and other locations proved fruitless as each rejected further discussion of offsite mitigation. We contacted Lisa Stratton of The Cheadle Center for Bio-Diversity, who expressed great interest in having 6 acres of off-site grasslands near the West Campus Bluff. She did some estimates which made the prospect seem feasible.

The County denied a Bonus Density incentive request to reduce the mitigation to a 1 to 1 level, without making the required statutory findings. Mitigation measures cannot exceed legal limits and they must be reasonable and feasible. The County refused to further process the project until we agreed to the 2 to 1 mitigation. The County Housing Element has policies that expressly support reasonable and prompt processing to facilitate development of housing, both market and affordable. In truth, this is not honored in processing, as the Purple Needle Grass treatment in this project demonstrates.

Reasoned and careful planning inherently involves trade-offs. Off-site mitigation has been characterized as preferable by the professional biologist who has studied the site since the late '90s. On-site maintenance of native grasses under the 2007 plan both unreasonably interfered with private backyards and created a fire hazard if indeed those grasses were left in their native state, which is seasonally dry and flammable in fire season. Moreover, it would have forced owners of property, including Lot 17, the Retention area, which is a seasonal recreation area in the 2010 plan, to lose that as a recreational resource. County Parks fees are specifically based on new homes providing an additional demand on County Parks because on-site recreational opportunities are not available. On-site seasonal recreational opportunities reduce traffic trips and create a healthier living environment for children and families living in the community.

Commissioner Cecilia Brown expressed the opinion that the off-site restoration was better and preferable in her discussion of issues prior to the Planning Commission approval of the project.

SAN ANTONIO CREEK ROAD

The staff has sent the Board a report at hearing on May 22, 2012, as the Board had requested, that showed some improvements that were required and completed at the connection of San Antonio Creek Road and Tuckers Grove under two permits, although B'nai B'rith seemingly did not do all of the improvements they had promised staff says that was covered in the subsequent separate permit. The road was a full use two way road until 1974 when the County determined it was appropriate to restrict it to emergency use only, because of the adequacy of other roads in the area.

The bottom line is that this issue is one raised by neighbors for every project in the area, and is not a justification for additional review or processing for this modest-sized housing project.

All of the impacts from this property were already analyzed and anticipated in the Master EIR for the Goleta Community Plan. No other project, including the three churches in the area, have had focused EIR's required on the area circulation.

We have spent 2 years of processing, fine tuning changes to a project with 12 lots, where 12 additional second units could be built without Environmental Review (and neighbors, in 2007 testimony, indeed anticipated the second units would occur). A MND was certified in 2007 anticipating these 12 or 24 units for the property.

As set forth in other materials, the project now offers the funds necessary to make improvements to this emergency egress road as per a Roads Division work program set forth in the staff report. The County has no other funds with which to make these improvements.

Neighbors dynamic, opposition & requests

We held community meetings on the Project proposal shortly after it was filed in 2010. We offered to meet with any and all neighbors to address any concerns they had. The parties who engaged us most actively were Mr. Vickers who lives immediately across from Lot 5 on Pennell Road to the north and Mr. Scott Brown and David Brown, who live across from Lot 1 on Pennell Road.

The Project started as 17 market rate lots and one affordable, consistent with the County's General Plan and the State Bonus Density Law which is incorporated in to the County Housing Element. Neighbors had concerns about both the density and the presence of the affordable. As an accommodation to neighbors, we dropped two market rate lots so the project would be fifteen market lots and one affordable lot. While we have done projects that have included a tasteful affordable component elsewhere in the area, neighbors had continuing concerns about it here. We planned a detached casita of classic architecture so it would appear appropriate. Many neighbors could build the same thing on their lot as a lawful second unit. We re-designed the entire plan to tuck the casita inside the project when the project

was re-designed to delete two market units. P&D encouraged us to delete those 2 units. This was probably inconsistent with state law that requires findings for reduction of units under what is permitted under the Comprehensive Plan but it seemed most practical at the time.

We met repeatedly with Mr. Vickers who frequently stated "it's all about property values". We have ushered other high quality projects to life in the area and had neighbors walk through the Vintage Ranch project and a home there to try to show our sensitivity to quality. (I am CEO of the Oak Creek Company, which was co-developer of Vintage Ranch housing project).

Some neighbors, including Mr. Vickers, employed the usual tactic of encouraging the County not to approve the project so that they could have another developer develop the property more to their liking, namely the 2007 approval of 12 lots. This occurred as recently as the Planning Commission hearing of September 5th, when numerous speakers said that there was another developer ready now to purchase the property and implement the 2007 plan. Interference with contractual relations (private contract for the purchase of the Property) seems to have been the goal. Mr. Vickers is listed as a real estate developer in his publicly available listings.

A specific objective and tactic of neighbors is to delay the 2010-2012 plan sufficiently that the time delay alone stops the project. Neighbors have succeeded in inducing the County to vastly exceed state law statutory limits for processing this Tentative Map application. CEQA has limits of one year for preparation of an EIR, and 180 days for preparation of an ND. At the hearing on October 16, 2012, the project will be 890 days of processing, the appellants are hopeful that an EIR will be ordered at that time to delay the project even further beyond legal limits.

We have tried over time to explain that the inclusionary-affordable housing is something that the County requires us to deal with. We are dealing with it in the most practical manner possible. The 2007 Plan approval carries with it an in-lieu fee requirement that is approximately $1.2 million to satisfy currently, an unlawful and entirely impractical assessment on an infill project (see Attachment). The project has gone from 17 market homes and one affordable on 14.85 acres to 15 market homes and one affordable. The only "bonus" for this project now is one market home and the one on-site affordable unit-the casita rental. The final issue was road improvements which we have discussed elsewhere.

No Nexus

The Fire Department has said that this project meets and exceeds all Fire Department Standards. Both the Fire Department and Roads have stated that there is no nexus between that Tuckers Grove road connection and the Park Hill project and that the project's road fees cannot be used for further work on that road connection. The County has never considered more improvements there to justify that work being a project on the GTIP list.

Road and Fire say there is no nexus for this project; CEQA cannot conclude otherwise.

Analysis

The fire safety issue has two sub components that have not been appropriately separated: -is it safe for the residents of the new homes on the Park Hill site? Are new residents being brought to an area that is unsafe from a fire standpoint?

This issue is already handled in the master EIR in the Goleta Community Plan. This is also the issue that the CEQA initial study checklist goes to.

A second subset of this issue could be- does the addition of new homes in the area pose a threat to the lives of existing residents? There is a County CEQA guideline section "risk *of upset and danger"* but it relates to major energy facilities. One of the many problems with applying it to infill housing is that there is no threshold of significance at which one triggers a potential impact. How could infill housing approved by the Fire Department be remotely considered like an energy facility for which the risk is that there will be a major malfunction and release of dangerous substances? The threshold would have to be above any number of units proposed to date in any version of the project, since (at least) 12 homes are already certified in prior environmental documents, 14 in the master EIR and up to 18 via the Housing Element subsequent environmental review.

It would be discrimination against this project to say its additional 4 homes above the existing approval has the possibility of creating a significant impact. The County did not say the 4 homes in the Castro 4 lot subdivision exceeded that threshold (indeed the 4 homes approved in Castro could become 8 units with 1200 square foot second units being allowable on each as a second unit). Neighbors have certified to the Supervisors that 12 homes are acceptable, and in 2007 neighbors said they expect the 12 to become 24 with 2nd units. By not raising the issue of fire endangerment on Castro or other matters, it is evident that what matters is the composition of those additional 4 homes. Only Park Hill Estates has one of those additional homes being an affordable unit.

The Santa Barbara County Environmental Thresholds and Guidelines Manual lists 16 separate categories of issue area for environmental review. One area is public safety thresholds. That lists 12 types of projects that can include risks to public safety. They include oil and gas facilities, transportation of hazardous rocket propellants, and handling of radioactive materials and things of that sort. There is a threshold of significance on the risk of fatality from those extraordinary uses for which a threshold of significance is created.

Clearly development of infill housing at a density of close to 1 unit per acre per the County community plan does not trigger a public safety threshold. It does not trigger a traffic threshold either, and no one has suggested otherwise. The Goleta Community Plan describes the fire protection service under public services (other public services include electricity, natural gas, schools, and wastewater collection). The Community Plan analyzed an additional development of 6,230 housing units which has not remotely been approached. See Goleta Community Plan, final EIR page V.K-9 at figure V.K-1. It shows existing and proposed fire stations and response times within 5 minutes. The Park Hill property is within the 5 minute response time of station 19 and station 13's 5 minute response time comes right to the edge of the property.

The EIR stated that "because of the special difficulties of servicing development in relatively inaccessible foothill areas with high fire danger, development proposed for the foothills represents a potentially

significant impact." The EIR adopted overriding considerations for this impact. Please note that many areas in the generically described "relatively inaccessible foothill areas" are indeed outside the 5 minute response time and indeed much more inaccessible than the Park Hill property.

Periodically the County has adopted environmental documents that renew and supplement the EIR (state clearinghouse number 90010559) including housing element ND's that anticipate the few additional units associated with inclusionary zoning that gives offsetting additional units when affordable units are provided onsite and bonus density units.

Uniformly applied conditions such as rigorous County Fire Department Standards and ever increasing building code standards in high fire zones are mitigation measures adopted to lessen the impact of anticipated environmental impacts associated with building in a high fire area.

Development of homes consistent with the community plan is anticipated, analyzed and covered by the EIR and subsequent environmental documents related to the Community Plan. It appears that the special CUP's that have been done in the area to permit various activities at the three local houses of worship do not have the same level of existing CEQA review coverage. As such they may have had additional scrutiny as to these issues as the quantity of those uses would not have been specifically anticipated in the Community Plan.

The fact that all of the CUP's have been issued for those houses of worship including their ancillary uses is evidence that the County has determined over time that the issue of fire safety is adequately addressed in that specific neighborhood to justify even uses beyond what was contemplated in the Community Plan.

As there was testimony that Lou Zeluck attempted his development efforts all the way back in 1972, it would be particularly inappropriate to have the only project that is subject to additional environmental review- be the last 4 homes proposed for this property. There is clearly no identified threshold of significance that the County would be applying to determine that the impacts from this project would be potentially significant after conventional fire safety mitigation. There is not only no threshold of significance, but also none of the 16 issue areas covers a category of impact on neighbors by developing the property consistent with the Community Plan.

Per CEQA guidelines section 151833(a), CEQA mandates that projects which are consistent with the development density established by existing zoning, Community Plan, or General Plan polices for which an EIR was certified **shall not require additional environmental review, except as might be necessary to examine where there are project, significant effects which are peculiar to the project or its site.** This streamlines review of such projects and reduces the need to produce repetitive environmental studies."

Clearly Park Hill Estates v.2 is consistent with this requirement.

Per the analysis of the relationship of Master EIRs and subsequent environmental review, OPR (State of California Governor's Office of Planning and Research) says as follows:

I. Use With Subsequent Projects

Once a Master EIR has been certified, a subsequent project may avoid the need for a further EIR or Negative Declaration when the Lead Agency finds that the project was described in the Master EIR as being within its scope (Section 21157.1, Guidelines Section 15177).

II. Initial Study

When a later development proposal is received, the Lead Agency must prepare an initial study to analyze both of the following:

1. **Whether that proposal may cause any additional significant effect on the environment not examined in the Master EIR; and**
2. **Whether the proposal is within the scope of the Master EIR.**

When the Lead Agency for the proposal is able to make a written finding, based on the initial study, that the subsequent project is within the scope of the project covered by the Master EIR (i.e., the plan or program), no further EIR or Negative Declaration is required. Pursuant to Section 15177 of the CEQA Guidelines, **"[w]hether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency." This finding must be supported by substantial evidence in the record.**

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"(I)n the 1993 *Laurel Heights* decision, the California Supreme Court indicated that the fair argument standard derived from both the statutory language and policies underlying Section 21151, and for this reason, applies "**only to the decision whether to prepare an original EIR or a negative declaration.**" (*Laurel Heights Improvement Association v. Regents of the University of California*, supra). **Applied here, this may mean that fair argument <u>does not apply once a Master EIR has been prepared if the Master EIR can be construed as the "original EIR" for a subsequent project.</u> In other words, if the project is within the scope of the Master EIR."**

http://ceres.ca.gov/ceqa/more/tas/master/Master_page3.html

Clearly the proposed project is within the scope of the Master EIR, which includes both the original EIR and all subsequent Housing Element augmentations.

Interplay between the Map Act and CEQA.

"The California Environmental Quality Act (CEQA) [1] provides that in mitigating or avoiding a significant effect of a project, "a public agency may exercise only those express or implied powers provided by law *other than* [CEQA.]"[2] **In other words, a city may not rely on CEQA as an**

independent source of legal authority to impose conditions of approval on a map.[3]" [1]

There is no nexus for Park Hill doing anything to upgrade the current County road grid so environmental review of the road grid is totally inappropriate.

CEQA and Housing
CEQA expressly recognizes that the local agency must balance producing such information with the statewide objective of facilitating housing.

> Often overlooked is that included in the statutory language is legislative intent regarding provision of housing and, impliedly, public services for residents: all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, **while providing a decent home and satisfying living environment** for every Californian [Pub. Resources Code §21000(g) (emphasis added)].
>
> In addition, CEQA's goal includes the directive to: Ensure that the long-term protection of the environment, **consistent with the provision of a decent home and suitable living environment** for every Californian, shall be the guiding criterion in public decisions [Pub. Resources Code §21001(d) (emphasis added)].

For the County to even pause as it has to determine whether its action in restricting full access through the San Antonio Creek Road- Tuckers Road link is such that more review might be required of that very issue before this project can go forward puts the County clearly under the liability demonstrated in the Half Moon Bay case[2] where the city was held for all damage to a property from its action which impaired the property's development. If there is indeed substantial evidence that the County has errantly limited traffic through San Antonio Creek Road- Tuckers Grove, first there is no nexus between that issue and development of Park Hill at densities proposed, as the extra 4 units represent a small fraction of the 450 homes and lots in the area and hundreds of users of houses of worship, but if the County views it as such, it has assumed full liability for damage to the property.

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[1] Pub. Resources Code, § 21004 [emphasis added].[FN3] Corona-Norco Unified Sch. Dist. v. City of Corona, 13 Cal. App. 4th 1577, 1587, 17 Cal. Rptr. 2d 236, 81 Ed. Law Rep. 217 (4th Dist. 1993) (explaining that CEQA is not a source of public agency power).[FN4] E.g., Gov. Code, §§ 66411, 66411.1."

[2] (Yamagiwa v. City of Half Moon Bay, *523 F. Supp. 2d 1036 [N.D. Cal. 2007].)*

The purpose of environmental review is to identify impacts and mitigation. Clearly the County has no nexus to require that the Park Hill project or its last 4 units improve the Tuckers Grove connection when this is for the use of others in the area, so there is no functional purpose of doing a focused EIR other than more delay. That road connection was unilaterally restricted by the County when it was deemed supplemental to other roads that existed in 1974; it is not required by the Fire Department, and it has not been required for other projects. Indeed this has been used as a third point of access in recent fires and has not even been identified as a future improvement by the County.

Neighbors in many meetings with us have said "it is all about property values." Their belief is that an affordable unit will degrade their property values, even though this will be no more than a detached second unit that is a rental that exists many places in the neighborhood. This point of view is misplaced both factually and legally.

> Under California Supreme Court and appellate case law, it is clear that opposition groups that are wholly supported by project proponent competitors seeking to advance only economic interests would not have standing to sue under CEQA. *See Citizens of Goleta Valley v. Board of Supervisors* (1992) 52 Cal.3d 553 (*Goleta II*); *Long Beach Savings and Loan Association Redevelopment Agency* (1986) 188 Cal.App.3d 249.
>
> In the *Goleta II* decision, the court stated
> CEQA review must not be used as "an instrument for the oppression and delay of social, economic, or recreational development and enhancement," *Citizens of Goleta Valley v. Board of Supervisors* (1992) 52 Cal.3d 553 (*Goleta II*)

Bonus Density Case

The Wollmer v. City of Berkeley case held that a project that was based on base density but then enhanced with a bonus density did not trigger CEQA review if the bonus density element of the project constituted a community plan change. The bonus elements of that project in Berkeley vastly exceeded the modest bonus elements in Park Hill Estates v.2, which have been largely eroded as concessions to neighbors to reduce the bonus units to just the affordable unit. WOLLMER, v. CITY OF BERKELEY et al (2009) 179 Cal.App.4th 933

Selected quotes from that case include:

> The Legislature has declared that "[t]he availability of housing is of vital statewide importance," and has determined that state and local governments have a responsibility to "make adequate provision for the housing needs of all economic segments of the community." (§ 65580, subds. (a), (d).) Achieving the goal of providing housing affordable to low- and moderate-income households thus requires the cooperation of all levels of government. (Id., subd. (c).)

> "As pertinent here, the density bonus law provides that "[t]he granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment . . . , zoning change, or other discretionary approval." (§ 65915, subd. (f)(5).) And, as explained in part II.A.4, ante, subdivision (e)(1) prohibits a local municipality from applying "any development standard that will have the effect of physically precluding the construction" of a density bonus-qualifying development."

Exclusionary Zoning

A focused EIR will kill this v.2 project and P&D previously acknowledged this. The County will be a great example of the legally repudiated planning principle of exclusionary zoning if they thus thwart this project.

There is distinct state law support for infill housing that exists to protect this and other projects. One is as follows:

> **"§ 65008. Discrimination; prohibition**
>
> (1) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:
>
> (2) The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income."
>
> (3) A city, county, city and county, or other local government agency may not, pursuant to subdivision (d) of Section 65589.5, disapprove a housing development project or **condition approval of a housing development project in a manner that renders the project infeasible** if the basis for the disapproval or conditional approval includes any of the reasons prohibited in paragraph (1) or (2).

This property is pure infill property that has been subject to County process for much of the time since 1997. The affordable housing issue went from quite manageable with a $95,000 in-lieu fee to unmanageable with a 30% inclusionary requirement and vast in-lieu fees as an alternative.

The state has advised the County that it is looking to the County to comply with Government Code Section 65863 which requires finding to justify reductions in density below local General Plan designations.[3] The county community plan included base zoning and the Housing Element which increases densities on all sites. The Bonus density law has been a state overlay on the Goleta community plan for well before the Master EIR in 1991.[4]

[3] Feb. 9, 2011 Letter to CEO Waller from State Department of Housing and Community Development.

[4] **The bonus Density law goes back to 1979, Cal.Gov.Code § 65915,** Added by Stats.1979, c. 1207, p. 4748, § 10, eff. Oct. 2, 1979. Amended by Stats.1982, c. 1263, § 2, eff. Sept. 22, 1982; Stats.1983, c. 634, § 1; Stats.1984, c. 1333, § 2; Stats.1989, c.

As to San Antonio Creek Road-Tuckers Grove, the undisputed facts in the record:

- San Antonio Creek Road through Tuckers Grove was a full use 2-way road until the County limited its use in about 1974 (S. Zeluck testimony, written submittal).
- These owners bought the property and embarked on development efforts before the County limited that road use.
- The County did a master EIR for the Goleta Community plan, covering development of this property, in 1991, well after the road connection status that exists now was in place.
- The master EIR found that there were potentially significant impacts associated with developing properties north of Cathedral Oaks and Foothill but found overriding considerations and standard mitigation measures.
- The County has subsequently adopted environmental documents for the Housing Element that anticipate additional units above the base density from 1991 and found there are no significant effects from the small incremental additions through bonus density and inclusionary-added units.
- The Park Hill project is fully within the density covered by the Master EIR and the subsequent Housing Element environmental reviews.
- The Tuckers Grove exit was indeed used as an evacuation road in the most recent fires (D. Brown at Supervisors and C. O'Connor in writing to PC).
- The Park Hill property has, in addition to the master EIR, a certified MND in 2007 that approved 12 homes on 1 acre lots.
- The County has uniform fire protection policies imposed on each project, including number of access roads within the project. The first Park Hill project proposed in 1997 had 1 point of access (on the east) (See letter from County submitted to the record). The County required a second access at the south which was added. This exceeds the current Fire Department standard of two points of access when 30 homes are developed.
- The Park Hill v.2 project proposed in 2010 added a third emergency link to Pennell through the edges of lots served by the cul-de-sac that is directed towards the north of the project. The neighbors (through D. Vickers) requested that we eliminate that emergency connection which we did (see project file- A. Tuttle can confirm). This extra emergency length would have allowed people from the north or south to travel through the project if San Antonio Creek Road was blocked south of Pennell and before the projects eastern entrance. As it is, the two road links within the project add to the emergency circulation in the area if San Antonio Creek Road is blocked.
- The County has not put improvement of the Tuckers Road connection on the GTIP list of road projects, as it has not to date determined that those improvements are necessary and appropriate.
- The applicants had offered to dedicate the $203,000 road fees to the closest road issue including this. The County could not use any Road funds for this road improvement because that road segment is not on the GTIP list.

842, § 3; Stats.1990, c. 31 (A.B.1259), § 3, eff. March 26, 1990; Stats.1991, c. 1091 (A.B.1487), § 64; Stats.1998, c. 689 (S.B.1362), § 6; Stats.1999, c. 968 (S.B.948), § 7; Stats.2000, c. 556 (A.B.2755), § 1; Stats.2002, c. 1062 (A.B.1866), § 3; Stats.2003, c. 430 (A.B.305), § 1; Stats.2004, c. 724 (A.B.2348), § 5; Stats.2004, c. 928 (S.B.1818), § 1; Stats.2005, c. 496 (S.B.435), § 2; Stats.2008, c. 454 (A.B.2280), § 1.)

- In the 2007 hearing, the then President of the San Antonio Creek owners association said "this 12 lot approval means there will be 24 homes there as we expect all to have second units."
- Our current project plan with setbacks thwarts development of second units on all lots, thus limiting maximum residences to 15+1.
- Hours before the May 22nd Supervisor's hearing, we were contacted by the County, saying that the Roads Division of Public Works had come up with a work program to enhance the utility and safety of that road segment, and although it could not be required of the Park Hill project, it might be of value to consider. We agreed to fund those improvements if the County readily issued an encroachment permit to allow it if the project was approved then. The project was not approved and on a 2-2 vote, it remained suspended in processing.
- On July 19, 2012, we wrote to the Fire Department and Planning and Development, stating that we would fund those improvements if we received final project approval within a specified time frame (see Letter in Administrative Record). The Planning Commission approved the project on September 5th, 2012, which was within the timeline we identified.