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Cc:	Nelson, Bob; Lavagnino, Steve; Hartmann, Joan; Hart, Gregg; Supervisor Das Williams
Subject:	PC Venskus and Assoc. - Revised MRN response Modoc Pathway
Date:	Friday, October 14, 2022 3:49:17 PM
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October 7, 2022

SENT VIA ELECTRONIC MAIL

Board of Supervisors
County of Santa Barbara
105 E Anapamu Street, Suite 407
Santa Barbara, CA 93101
c/o: Morgan Jones (mmjones@countyofsb.org); and
Clerk of The Board (sbcob@co.santa-barbara.ca.us)

RE: Comment Letter on the Proposed Modoc Road Multi-Use Path for the County Board of Supervisors' November 1, 2022 Hearing

INTRODUCTION

The Community Association for the Modoc Preserve ("CAMP") is a grassroots organization dedicated to protecting the Modoc Preserve – a biodiverse oasis with at least 133 plant species and 71 bird species. CAMP represents over 4,060 (and growing) individuals who have signed on to CAMP's Save The Modoc Road Trees petition (https://www.change.org/SaveModocRoadTrees). CAMP hereby submits this comment letter on the proposed Multi-Use Path for the County of Santa Barbara, for which a Mitigated Negative Declaration has been prepared pursuant to the California Environmental Quality Act. ("proposed Project").

The County staff has recommended that Alignment B be approved. CAMP opposes both Alignment A and Alignment B as set forth in the Revised MND dated September 8, 2022, and requests that the Board of Supervisors place the entire Multi-Use Path up onto Modoc Road or let the ATP grant expire so that these funds can be used where they are most needed to increase bike safety in Santa Barbara County. The County has already moved the western half of the Multi-Use Path onto Modoc Road using existing asphalt infrastructure in County Right of Way (ROW), north of the valuable tree belt that lines Modoc Road. CAMP calls their proposed alignment placing the entire path onto Modoc Road the "Greenbelt Alignment".

Any decision by the Board of Supervisors to approve the proposed Project as currently formulated will result in multiple violations of the California Environmental Quality Act. First, the Initial Study/Mitigated Negative Declaration ("MND") prepared

for the proposed Project contains numerous inaccuracies and fails as informational document. Second, Alignment B is not viable since it cannot be constructed in a manner consistent with the Conservation Easement in the Modoc Preserve that the Land Trust for Santa Barbara County currently holds. Third, Alignment A, as currently designed, is not tenable for multiple reasons, not the least of which being that it would destroy 29 majestic Canary Island Palm Trees and a number of native Oak trees not included in the MND's tree survey.

Therefore, CAMP respectfully requests that the Board of Supervisors reject the MND for the proposed Project at this time, and instead, consider the Greenbelt Alignment.

LEGAL BACKGROUND

Once an agency decides that a project is not exempt from CEQA, it prepares an Initial Study. The purpose of the initial study is to inform the choice between a Negative Declaration or an Environmental Impact Report ("EIR"). (14 California Code of Regulations ("CCR" or "CEQA Guidelines") §§ 15063(c)(1); *Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 7.)

"In preparing an Initial Study, the Lead Agency bears the burden to investigate the potential environmental impacts. The failure to conduct an adequate Initial Study may limit the substantial evidence upon which the agency determines whether an EIR is necessary. Courts have held that deficiencies in the administrative record, such as an inadequate Initial Study, may actually enlarge the scope of the fair argument by lending a logical plausibility to a wider range of inferences of possible environmental impact.[.]" (1 California Environmental Law & Land Use Practice § 21.08 (2022).)

When an Initial Study is used to decide whether or not an EIR is necessary, the Lead Agency must determine whether *there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment.* (CEQA Guidelines § 15063(b)(1).)(emphasis added.)

If there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment, the Lead Agency must prepare a Negative Declaration. (CEQA Gudielines § 15063(b)(2); Public Resources Code ("PRC") § 21080(c)(1).)

On the other hand, if there is substantial evidence that the project may have a potential environmental effect that is significant, then the lead agency must do one of the following: 1) prepare an EIR, 2) use a previously prepared EIR that adequately analyzed issue, or 3) revise or mitigate the project so it no longer causes a significant effect and then issue a mitigated negative declaration. (PRC § 21080(c)(2) and (d); CEQA Guidelines 15063(b)(1).)

These determinations must be based on substantial evidence in the record. (CEQA Guideline § 15064(f).)

Specifically for Mitigated Negative Declarations, "A public agency shall prepare or have prepared a proposed [] mitigated negative declaration for a project subject to CEQA when: (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or (b) The initial study identifies potentially significant effects, but: (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment." (CEQA Guideline § 15070.)

Any necessary mitigation measures must be specifically set forth in the Mitigated Negative Declaration in advance of Lead Agency adoption of the Mitigated Negative Declaration (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1606 fn 4). When a public agency adopts a Mitigated Negative Declaration, the adopted mitigation measures must expressly be made conditions of project approval. Also, the Lead Agency must adopt a monitoring or reporting program for the mitigation measures that it included in the Mitigated Negative Declaration or made a condition of approval to avoid significant effects on the environment. (PRC § 21081.6(b); CEQA Guidelines § 15074(d); see *Ocean View Estates Homeowners Assn. v. Montecito Water Dist*. (2004) 116 Cal. App. 4th 396, 400–401.)

ANALYSIS

1. **THE MITIGATED NEGATIVE DECLARATION FAILS AS AN INFORMATIONAL DOCUMENT BECAUSE IT OMITS AND OBFUSCATES SUBSTANTIAL EVIDENCE OF POTENTIAL ENVIRONMENTAL IMPACTS**

   A. The Initial Study/Mitigated Negative Declaration ("MND") Obfuscates Substantial Evidence Of Potentially Significant Impacts On Biological Resources

In describing the thresholds of significance for biological resources, the MND admits that the following impacts could be potentially significant: a) A loss or disturbance to a unique, rare or threatened plant community; b) A reduction in the numbers or restriction in the range of any unique, rare or threatened species of plants; c) A reduction in the extent, diversity, or quality of native vegetation (including brush removal for fire prevention and flood control improvements); d) An impact on non-native vegetation whether naturalized or horticultural if of habitat value; e) The loss of healthy native specimen trees; g) A reduction in the numbers, a restriction in the range, or an impact to the critical habitat of any unique, rare, threatened or endangered species of animals; h) A

reduction in the diversity or numbers of animals onsite (including mammals, birds, reptiles, amphibians, fish or invertebrates); i) A deterioration of existing fish or wildlife habitat (for foraging, breeding, roosting, nesting, etc.); and k) Introduction of any factors (light, fencing, noise, human presence and/or domestic animals) which could hinder the normal activities of wildlife. (Revised MND p. 28.)

More specifically, the Santa Barbara County Environmental Thresholds and Guidelines Manual ("County Guidelines") states that "Assessment of impacts must account for both short-term and long-term impacts. Thus, the assessment must account for items such as immediate tree removal and longer-term, more subtle impacts such as interruption of the natural fire regime or interference with plant or animal propagation." (County Guidelines, p. 27.) The County Guidelines further state that "Disturbance to habitats or species may be significant, based on substantial evidence in the record (not public controversy or speculation), if they substantially impact significant resources in the following ways:

(1) Substantially reduce or eliminate species diversity or abundance
(2) Substantially reduce or eliminate quantity or quality of nesting areas
(3) Substantially limit reproductive capacity through losses of individuals or habitat
(4) Substantially fragment, eliminate, or otherwise disrupt foraging areas and/or access to food sources
(5) Substantially limit or fragment range and movement (geographic distribution or animals and/or seed dispersal routes)
(6) Substantially interfere with natural processes, such as fire or flooding, upon which the habitat depends."

(County Guidelines p. 27.)

The revised MND obfuscates the existence of substantial evidence that would establish one or more of the above-enumerated factors. Even worse, the lion's share of evidence the MND has ignored came from studies commissioned by the County of Santa Barbara as part of other County projects.

i. *Obfuscation of the Presence of, and Impacts on, Native/Special-Status Oak Trees*

The MND represents to the public and the decision makers that zero (0) Coast Live Oak trees will be removed under the Alignment A scenario. (See MND p. 41, Table 8 [Tree Removal Summary]; see project webpage as of September 27, 2022 https://www.countyofsb.org/modocmup].) The evidence demonstrates that this statement in the MND is false.

The County's own tree base map for the instant proposed Project identified a stand of 7 oak trees situated over what is now Alignments A and B along Modoc Road just before Via Zorro. (Exhibit A [Original Tree Base Map, Sheet 3 of 4, Trees Nos. 103-104, 106-108, and 110-111.].) Photographs confirm the presence of the oak trees in this location.

(Exhibit B [Photographs of Oak Trees Along Modoc Road].) The MND's error is compounded by the fact that the full complement of Coast Live Oaks that are present along this specific stretch of Modoc Road were identified on the original tree base map (See Exhibit A [Original Tree Base Map, Sheet 3 of 4]) but were omitted from the subsequent Alignment Maps (see Exhibit C [August 27, 2022 Alignment Map].) The subsequent maps even misidentified one oak tree as a eucalyptus tree. (*Ibid*.) The stand of Oak Trees is clearly in both Alignments A and B and subject to removal by the proposed Project. (Exhibit D [Photographs of Oak Trees in boundary markers set placed by the county].)

When the existence of the stand of oak trees and these other errors were brought to the attention of the senior environmental planner with the County of Santa Barbara, he admitted that the County was aware of this error and subsequently provided a revised tree impact summary noting that 6 Native Coastal Live Oaks may be removed under the proposed Project. (Exhibit E [Morgan Jones E-mail].) This updated information was not included in, or analyzed in, the MND provided to the decision-makers. The MND still indicates that 0 Coast Live Oaks will be removed under Alignment A.

An additional inaccuracy in tree species identification in the MND occurs near Modoc Road and Clara Vista Road. There, the County once again misidentified an Oak Tree as a 33" Eucalyptus Tree. (Exhibit A [Tree Base Map, Sheet 2 of 4, identifying Tree # 77 as "Q"]; see Exhibit C [August 27, 2022 Alignment Map still reflecting a Eucalyptus Tree, not an Oak Tree]; Exhibit F [Photographs of misidentified Oak Tree].)

Since the full complement of oaks trees subject to removal were not identified or addressed in the MND, the MND fails as an informational document. Moreover, the MND fails to provide mitigation measures for the oak trees that would be removed under Alignment A. For these reasons alone the MND should be rejected.

ii. Obfuscation of Habitat Loss Data

The County calculated tree canopy habitat loss resulting from loss of trees along a stretch of Modoc Road for a different portion of the Multi-Use Path not directly at issue in the instant project as shown by the following table that CAMP obtained via a California Public Records Act Request:

Habitat Loss					
Species	Average Canopy Radius	Area (ft2)	Number	Total Area (ft2)	Acres
Phoenix	10	314	13	4084	
Eucalyptus globulus	15	707	27	19085	
Quercus agrifolia	10	314	13	4084	
Schinus	10	314	3	942	
Salix	10	314	1	314	
Podocarpus	10	314	2	628	
Eucalyptus citriodora	15	707	1	707	
TOTAL				**29845**	**0.69**
Non-Native				**25447**	**0.58**

But this calculation was not performed in the Revised MND. Per CAMP's own calculation, the following habitat loss would result in the instant project for Alignment A:

> Phoenix canariensis/Canary Island Date palm: 29 trees x 314ft2 ave. canopy area = 9106ft2
>
> Blue gum Eucalyptus: 8 trees x 707ft2 canopy area = 5656ft2
>
> Lemon gum Eucalyptus: 5 trees x 707ft2 = 3535ft

Total tree canopy habitat loss Alignment A: 9106ft2 + 5656ft2 + 3535ft = 18,297ft2. Additionally, if we calculate the loss of shade canopy for the 6 Coast Live oaks (Quercus agrifolia), there is an additional 6 x 314f2 canopy area = 1884ft2 of canopy loss.

No reasonable person could conclude that losing ~20,000 square feet of habitat and shade canopy is not a significant loss, especially given the state of our climate emergency. Mitigated plantings are only for native trees, which the County states that 0 native oaks would be removed in Alignment A from the County's Table 8 **Tree Removal Summary** ...when if fact, there are 6 Coast live oaks (*Quercus agrifolia*).

iii. Obfuscation of the Presence of Special-Status Plant Species

The MND indicates that the only special status plants observed on-site were Coast Live Oaks. (MND p. 32.) Substantial evidence indicates that the observer (with only one visit to the site) failed, as there are clearly other special status plants on site, as the photographic evidence and studies commissioned by the County over a 5 year period demonstrate.

The MND admits that plants listed as a "rare plant of Santa Barbara County" by the Santa Barbara Botanic Garden or plants considered by the California Native Plant Society to be "rare, threatened, or endangered in California," are special-status plants. (MND p. 33.)

According to this definition, then, Southern Tarplant, Yerba Mansa and Spiny Rush are all special status plants. In its 2020 annual grassland restoration report submitted August 25, 2020 to Mr. Alex Tuttle of SB County Public Works by Kisner Restoration and Ecological Consulting, Inc. (KR&EC) along with Dr. Adam Lambert, the County admitted that the Southern Tarplant, Yerba Mansa and Spiny Rush were all classified as rare plants by the Santa Barbara Botanic Garden. (Exhibit G [Grasslands Restoration Project Annual Report, Attachment C, pg C-4.) For ease of reference, CAMP has extracted the table from the County-commissioned Grasslands Restoration Project Annual Report Attachment C, and display only the relevant plants at issue for purposes of this argument section of this comment letter.

PLANT SPECIES OBSERVED ON SITE

Scientific Name	Common Name	Origin	Before Grassland Restoration 2014	Year 1	Year 2	Year 3
*Anemopsis californica**	Yerba mansa	N	Preserve	WM		
*Centromadia parryii ssp. australis**	Southern tarplant	N (rare)		G/WM		
*Juglans californica**	Southern California black walnut	N	G	G		
Juncus acutus ssp. *leopoldii**	Southwestern spiny rush	N		WM		
Stachys ajugoides var. *ajugoides**	Hedge nettle	N		G/WM		

*listed on Santa Barbara Botanical Garden's Rare Plants of Santa Barbara County List

Preserve: Found on the Modoc Preserve but no within the restoration area; WM: Found in the wet meadow portions of the restoration area.

G: Found in the grassland portions of the restoration area; v: volunteer native species; if "p" also listed it was also planted in other areas

Additionally, the Southern Tarplant is also classified as rare, threatened or endangered by the California Native Plant Society. (https://rareplants.cnps.org/Plants/Details/144.) In fact, the Southern Tarplant is ranked 1B.1 on California Native Plant Society (CNPS) Rare Plant Inventory List. (https://rareplants.cnps.org/Search/result?global=southern%20tarplant [stating 1B.1: Plants rare, threatened, or endangered in California and elsewhere.
Plants with a California Rare Plant Rank of 1B are rare throughout their range with the majority of them endemic to California. Most of the plants that are ranked 1B have declined significantly over the last century.].)

The evidence demonstrates that Southern Tarplant, Yerba Mansa and Spiny Rush are all present in the Modoc Preserve and are in close proximity to the proposed alignments. The County listed Yerba Mansa and Spiny Rush on a list of flora observed **along** the Alignment (MND pg. 28 ["A list of all plant species observed **along the multi-use path alignment** is provided as Appendix A"; Appendix A pg. 1 [listing Yerba Mansa], pg. 2

[Listing Spiny Rush])(Emphasis added.) This establishes that these two special status plants are not only in the Modoc Preserve, but along the proposed alignments.

The County's 2020 annual report on the Grassland Restoration project confirms that Southern Tarplant was present in the preserve, in close proximity to the alignment areas. (Exhibit G, Attachment C, pg. C-1 [Listing Southern Tarplant].) That same reporting also confirms the presence of all three special status plant species in the preserve as of 2020. (Exhibit G, Attachment C.) This evidence – which is the County's own evidence -- directly contradicts the MND's claims that no Southern Tarplants were observed on site and that Spiny Rush was not observed near the alignment. (MND pg. 33.)[1] Hedge Nettle, another special status plant, was also found to exist on-site by biologists funded by the County (Exhibit G, Attachment C, pg. C-4), but this special status plant is completely excluded from mention and analysis in the MND.

It is axiomatic that flora occurring along the proposed Project alignments are in danger of destruction. For example, the California Native Plant Society identifies development, recreational activities, human foot traffic and road widening as threats to the Southern Tarplant. (https://rareplants.cnps.org/Home/Glossary#_Toc72398855.) It is difficult to imagine how these threats would not also apply to Yerba Mansa and Spiny Rush. Yet, the MND has not identified these as potential significant impacts on biological resources and does not provide any analysis on these impacts, nor provide any mitigation for these impacts. Despite the fact that Dr. Adam Lambert wrote comments outlining this lack of analysis on 6/17/2022 (last day for comment in first MND) in an email to Morgan Jones...as well as pointing out other discrepancies and omissions, (Exhibit H [Lambert E-Mail]), the Revised MND fails to correct these deficiencies.

These omissions are troubling, given that some, if not all, of these plants were the result of seeding and planting performed under the County's own Grassland Restoration Project, which was implemented as a mitigation measure for significant impacts resulting from another construction project in the area. (See Exhibit G p.1 [discussed in more detail below]). The Revised MND should be rejected on this basis alone.

Furthermore, the County has overlooked, and in some cases contradicted, the presence of multiple special status plants that the County itself spotted on site just two years prior.[2] This only underscores how the MND fails to accurately describe the presence of special status plants on-site and makes the statement that the only special status plants observed on-site were Coast Live Oaks, erroneous. The MND fails as an informational document for this reason alone.

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[1] Perhaps the observer did not do a thorough job observing what is actually on-site.

[2] CAMP has issued a California Public Records Act request that included all annual reports from the Grassland Restoration Project, but to date, the most recent 2021 and 2022 annual survey reports have yet to be provided despite multiple requests for those reports.

The MND has also incorrectly framed the vegetation community types in the Modoc Preserve. (Exhibit H [Lambert E-mail].) This issue as well as the general concepts embodied by the issues identified above were brought to the attention of the County staff. (*Ibid*.) Yet, strangely, staff did not include any of this information in the MND.

Finally, the County was tasked with preparing a tree survey and tree protection and replacement plan. (See Exhibit I [Description of work for initial study].) The tree base map and the alignment maps, when considered together, do not meet the requirement for a survey of the specific number of individual trees, species and size in diameter breast height (Dbh), approximate height and location as set forth in the description of work. (Exhibit I.) There is no tree replacement and protection plan.

iv. Failure to Assess Impacts on Restored Native Grasslands

The County implemented a Native Grassland Restoration Project in the Modoc Preserve as a mitigation measure for another development in the area. (Exhibit G [Year 3 Annual Report for Modoc Preserve Native Grassland Restoration for the Boulders Park Hills Estates Project, Santa Barbara, California].) As part of that mitigation measure, a total of 15,749 native plants over 3.64 acres and approximately 45 pounds of seed over 2.23 acres were installed. (Exhibit G, pg. 2-3.) The Native Grasslands Restoration As Built Map shows that several areas that have received planting and seeding under the restoration program are near both alignments of the proposed Modoc Multi-Use Path. (Exhibit G, Attachment A, p. A-1 [As Built Map].) In fact, one planted area abuts Modoc Road near Clara Vista. (*Ibid*.) Photographs taken by CAMP also clearly show that native grass plantings and seedings have been made directly in the path of the proposed alignments. (Exhibit J [Photographs taken and marked by CAMP of Native Grassland located in the proposed Alignments].)

This puts a portion of the very plantings and seedings made as a mitigation measure for another County project at risk of destruction, thereby undermining the mitigation measure and the goals of the County's own Native Grassland Restoration Project. In fact, the County has also smoothly shifted focus away from the included 8' wide adjacent equestrian trail and 4' high fence separation...that could bring the width to 20'-24' in sections...it is impossible to do that and not invade the mitigated plantings in some sections. The destruction of pre-existing mitigation measures is not permissible under CEQA. It also signifies the inadequacy of the MND as an informational document due to its complete failure to identify that native grasslands would be removed under Alignments A and B.

The issues with special status plants and native grassland restoration were brought to the attention of County staff by the biologist (Dr. Adam Lambert) who worked on the County's Native Grassland Restoration Project, but, as we understand it, County staff never responded. (Exhibit H [Lambert E-mail].) Nor were these concerns addressed in the MND.

v. Obfuscation of Presence of Monarch Butterflies

The MND admits that animals that are candidates for possible future listing as threatened or endangered under the federal Endangered Species Act, as well as animal species of special concern to the California Department of Fish and Wildlife (CDFW), are special status species. (MND p. 34.) The Monarch Butterfly meets both of these thresholds. (https://wildlife.ca.gov/Conservation/Invertebrates/Monarch-Butterfly.)

The MND ultimately provides no impact analysis or mitigation measures for Monarch Butterflies because "monarch roosting has never been reported here [in the preserve]" (MND p. 36) and "none were observed at the project site during the biological survey" (MND p. 34). But substantial evidence demonstrates otherwise.

CAMP has recent photographs of Monarch Butterflies in the preserve (Exhibit K [Monarch Photographs]) and recent video of Monarchs in the preserve (Exhibit L [Video Link https://youtu.be/GUur19TqnG0 of Monarchs in the Modoc Preserve].) But the County need not resort to evidence from other sources, when its own 2020 Annual Report from the Grassland Restoration Project admits that "Efforts have continued to increase the number of narrow-leaved milkweed, the host plant for Monarch butterflies. In 2017, 150 milkweed plants were installed and in 2018 an additional 200 milkweed were installed. Monarch caterpillars were observed on many of the planted milkweed in spring of 2019 and 2020." (Exhibit G [Grassland Restoration Report p. 7 and Attachment B, p. B-19 showing a photograph of a Monarch Butterfly on a Milkweed Plant].) The MND's claim that Monarch butterflies were not observed on site during the field survey is especially problematic in light of this reporting. It is also suspect that no Monarch butterflies were observed at the project site during the biological survey for the project, when members of the community regularly observe Monarch butterflies at the site, as evidenced by the authenticated photographs and videos. It calls into question the comprehensiveness and propriety of the biological survey that was conducted for this proposed Project. Thus, the MND fails as informational document for this reason alone.

Yet, the MND uses the fiction that Monarch butterflies were not observed in the preserve to avoid identifying or analyzing the potentially significant impacts the proposed Project would have on Monarch butterflies and their habitat. And There is substantial evidence that Monarch habitat loss may occur under the project.

First, even the County itself has admitted that milkweed plants are host plants for Monarch butterflies and that many Monarch caterpillars were observed on said plants in 2019 and 2020. (Exhibit G [Grassland Restoration Report p. 7 and Attachment B, p. B-19 showing a photograph of a Monarch Butterfly on a Milkweed Plant]) The County also admits said plants were observed "along" the proposed alignments. (Revised MND, Appendix A pg. 1.) Again, any plant along the alignment is in danger of removal. Second, "Eucalyptus Trees are the dominate tree used by Monarchs in California." (Exhibit M [Frontiers in Ecology and Evolution Article].) The MND even admits as much by indicating that "Suitable roosting habitat (eucalyptus stands) occurs within the adjacent Modoc Preserve…" (Revised MND p. 34.) Yet, the MND also admits that

Modoc Preserve contains eucalyptus groves and that 8 eucalyptus trees are subject to removal under either Alignment. (MND p. 41.)

The MND fails to address the impacts of the removal of milkweed and eucalyptus trees on the presence of Monarchs in the preserve (whether or not roosting is occurring on site) and fails to provide mitigation measures for this impact. Thus, the MND is inadequate and fails an informational document for this reason alone.

That Monarch butterflies are present in the Modoc Preserve, despite a general decline in overwintering numbers, only underscores the need for a detailed analysis of the impacts the proposed Project may have on the butterflies. (Exhibit M [Frontiers in Ecology and Evolution Article].) The decline should also be placed in context. There is evidence that despite the decline in Monarch butterfly overwintering populations in California as whole, Santa Barbara County [Where Modoc Preserve is located] remains the number 1 county with the largest number of overwintering sites in the state of California. (Exhibit N [State of Overwintering Sites in California].) Furthermore, the herbicide ROUNDUP ® was used in the Modoc Preserve Restoration Project approved by the County. With the recent ruling on "ROUNDUP" and its drastic impact on the "Monarch" butterfly's habitat demise, this should have been addressed in the MND, as well by the CDFW, which still has not signed off or issued it's report.

vi. Obfuscation of the Presence of Other Animals

The MND also fails as an informational document because it misrepresents the number of birds observed near the proposed alignment, as data from ebird.org lists at least 5 more birds as being present in the Modoc Preserve than does the MND. (https://ebird.org/hotspot/L9995680.) Another birding group listed another two additional birds not noted in the MND. (https://sbcobirding.groups.io/g/main [Hugh Ranson sited 4/19/2020 "hundreds of Vaux's Swifts feeding over Modoc Open Space"... Hugh Ranson sited 1/6/2021: "Baltimore Oriole"].) Substantial evidence of migrating red shouldered hawks using eucalyptus and palm trees in the Modoc Preserve also exists. (Exhibit O [Video Link of Red Shouldered Hawks - https://youtu.be/NOg7b-IicJc].) The MND admits that a reduction in the diversity or numbers of animals onsite (including mammals, birds, reptiles, amphibians, fish or invertebrates) or a deterioration of existing fish or wildlife habitat (for foraging, breeding, roosting, nesting) are questions that must be answered in the CEQA analysis. But there is no analysis in the MND of the impact on red shouldered hawks from removal of Eucalyptus or Palm Trees.

vii. Inadequate Wildlife Corridor Analysis:

The MND indicates that "Habitats to be preserved and enhanced include, but are not limited to creeks, streams, waterways, fish passage, wetlands, vernal pools, riparian vegetation, wildlife corridors, roosting, nesting and foraging habitat for birds and subterranean species." (Revised MND p. 88.) However, the MND neglects to comment on impacts to wildlife corridors with 2000' of 2'-4' high concrete retaining walls.

Retaining walls not only impact the visibility of the beauty of the nature preserve, it also impedes the natural movement of the wildlife. The proposed Project is not consistent with avoiding impediments to the movement of wildlife. Whether it is snakes, foxes, coyotes, possums, skunks, rats, mice, etc...the retaining wall is like a "Berlin Wall" to wildlife, and also the public, that is supposed to be able to enjoy this area as undeveloped open space.

The MND goes on to state that, "Highly mobile species such as larger mammals and birds are expected to move between coastal areas and the Santa Ynez Mountains. Cieneguitas Creek and adjacent bike paths and trails provides a means to traverse developed areas, dense vegetation and steep slopes. Therefore, Cieneguitas Creek may be an important wildlife movement corridor in the area. Wildlife are also likely to utilize the cover and habitat provided by the Modoc Preserve during local movements." (Revised MND p. 33; Exhibit R [Photographs of Oriole Nest, Cooper's Hawk and Owl in the preserve].)

The Canary Island Date palms provide habitat for migrating Hooded Orioles...Alexandra Loos image of Oriole nest in Modoc Preserve. Here is a video of a fox trotting down East Encore Dr. to cross Modoc Road into the Modoc Preserve...a 2'-4' high concrete retaining wall and 14' wide asphalt road would impact this cross-sectional travel of wildlife into the Modoc Preserve. (https://youtu.be/HgA6Jsk5JsI.)

B. The MND Has Not Adequately Analyzed Visual/Aesthetic Impacts

The County Guidelines indicate that the existence of the following visual/aesthetic impacts could be potentially significant: "1) Does the project site have significant visual resources by virtue of surface waters, vegetation, elevation, slope, or other natural or man-made features which are publicly visible? If so, does the proposed project have the potential to degrade or significantly interfere with the public's enjoyment of the site's existing visual resources?" (County Guidelines p. 184-185.)

According to the County Guidelines, the first step in assessing a visual impact is to evaluate the "***visual resources of the project site***. Important factors in this evaluation include the physical attributes of the site, its relative visibility, and its relative uniqueness." (County Guidelines p. 184-185.)(Emphasis added.)

The MND has not adequately assessed the visual resources of the Modoc Preserve, nor has it asked or answered the fundamental question posed by the County's own thresholds as to whether the project will degrade or significantly interfere with the public's enjoyment of the Modoc Preserve's visual resources. (Revised MND p. 14-16.) The MND merely alludes to the fact that the trees lining Modoc Road provide a park-like setting. (Revised MND p. 15.) Above and beyond just the trees lining Modoc Road, the very nature of the Modoc Preserve would seem to end all disputes of its inherent visual value. Nevertheless, there is substantial evidence that Modoc Preserve has great visibility and uniqueness. (Exhibit G [Grassland Report showing diversity in plants and animals, including special status plants and animals].) If that were not enough, CAMP has

photographed views of the Modoc Preserve that can only be described as majestic. (See Exhibit P [Photographs of views into the preserve]; see also https://modocpreserve.com/modoc-preserve-gallery-1; https://modocpreserve.com/modoc-preserve-videos.)

The MND states that the scenic resource that is closest to the project site is the intersection of State Street and Route 154 (Revised MND p. 14), an intersection which contains an adult content store and a gas station. (Exhibit P [Photographs].) The superior visual value of Modoc Preserve as compared to this intersection cannot be understated. This bucolic section of Modoc Road, along Modoc Preserve, should be designated a Scenic Roadway.

Indeed, the conservation easement for Modoc Preserve recognizes the scenic value of the preserve. (Exhibit Q [Conservation Easement – "the Easement Area…is substantially undisturbed natural condition and the easement area possesses unique and significant natural, open space, scenic, wetlands, ecological and wildlife habitat values (collectively "Conservation Values") of great importance to LANDOWNER, the people of Santa Barbara County and the people of the State of California…"].)

Yet, when it comes to discussion the proposed Project's impacts on the visual value of Modoc Preserve itself, the County simply says that despite the removal of some trees along Modoc Road, other trees would remain and continue to provide a park-like setting. (Revised MND p. 15.) The MND then states that the removal of 29 mature palm trees will be minor and considered less than significant, when CAMPs photographs show that these are perhaps some of the most visually appealing trees in the Modoc Preserve. (Exhibit P.)

The County states on Page 15 in the revised MND, "These palm trees provide a distinctive visual character and park-like visual setting." (Revised MND p. 15.) The Canary Island Date palms are heritage trees over 100 years old. Henry Chase, the brother of the revered Pearl Chase, is responsible for planting the majestic Canary Island Palm Trees in the Modoc Road corridor...(https://www.pearlchasesociety.org/pearl-chase.)

Pearl Chase was a civic leader in Santa Barbara, California. She is best known for her significant impact on the historic preservation and conservation of that city. (https://en.wikipedia.org/wiki/Pearl_Chase ["*A pioneer in the fields of conservation, preservation, social services, and civic planning, Pearl Chase was devoted to improving the surroundings of others. For 70 years, from the time of her graduation from UC Berkeley in 1909, until her death, she was a dominant force in molding the character of Santa Barbara. Often referred to as the First Lady of Santa Barbara, she founded many civic and cultural organizations that have profoundly affected the city of Santa Barbara and the state of California, including the local chapter of the American Red Cross, the Community Arts Association, and the Santa Barbara Trust for Historic Preservation.'*].)

The MND admits at least some of the Palm Trees are at least 100 years old. (Revised MND p. 52 [**"**The cultural resources record search included the State Historic

Property Data Files, National Register of Historic Places, California Historical Landmarks and California Points of Historic Interest, and did not identify any historic resources in the immediate project area. However, residents in the project area have indicated the Canary Island palms along Modoc Road may have some historical significance, and possibly planted by a person of historical interest (Pearl Chase). In the Hope Ranch area, about 360 Canary Island palms were first planted in 1904, mostly along driveways on Las Palmas Drive and Marina Drive (Chase, 1963). Canary Island palms were first planted along Modoc Road in 1915 (Morning Press, 1915). Inspection of a January 1928 aerial photograph indicates a linear row of trees (possibly palms) was present on the south side of Modoc Road in the Via Zorro area. Inspection of an August 12, 1958 aerial photograph indicates a linear row of palm trees were present along the south side of Modoc Road. Therefore, at least some of the Canary Island palms along the subject segment of Modoc Road are at least 100 years old."].)

But the MND errs by declining to find the Palm Trees a historical resource. (Revised MND, p. 53 ["Archival research (including the County Planning and Development records) by the Santa Barbara County Public Works Department did not identify any historical significance of these palm trees or any connection to a historical property, building or person. Therefore, these trees are not considered a historical resource."].) This ignores the over a century old plantings of the Palm Trees by a significant historical figure.

The MND also downplays the impact of the retaining wall that will be as high as four feet on views into the preserve. At four feet high, the retaining wall would completely block certain views into the preserve from those passing the preserve by car and block other views.

Finally, the MND does not identify, analyze or provide mitigation for the impact of converting areas of the Modoc Preserve with special status and otherwise important plants with habitat value into a paved road. This would be the direct antithesis of preserving the conservation values (open space, scenic and wildlife habitat condition) of Modoc Preserve. Put another way, the MND has not acknowledged that loss of certain plants in the Modoc Preserve as a result of the proposed alignments may result in the loss of habitat and therefore the loss of wildlife in the Modoc Preserve. A loss of, for example, the Monarch Butterflies as a result of milkweed plant or eucalyptus tree removal would impair the visual value of the preserve by and through the loss of flora and fauna. In turn, the public's view into the Modoc Preserve would be impaired because the public would no longer see any, or as many, milkweed plants, eucalyptus trees or the Monarch butterflies that use those plants and trees as habitat. The MND's failure to address these impacts justifies denial of the proposed Project on this basis alone.

C. <u>The MND Has Not Analyzed The Impacts Of Degradation Of Topsoil Quality</u>

The proposed Project intends to "slightly re-align" the bioswale. The new drainage swale would have a top width of about six feet and depth of about two feet. (Revised MND p. 5 ["An existing man-made 750 foot-long earthen drainage swale located parallel to Modoc Road would be slightly re-aligned and incorporated into the multi-use path

design. The drainage swale would have a top width of about six feet and depth of about two feet."].) This is in direct conflict with the provisions of the Deed of Conservation Easement (Exhibit Q, p. 5) a portion of which has been embedded into this comment letter:

(f) **Erosion**. Any use or activity in the Easement Area which causes significant degradation of topsoil quality, significant pollution or a significant increase in the risk of erosion.

(g) **Alteration of Topography**. Any alteration of the general topography or natural drainage of the Easement Area, including, without limitation, the excavation or removal of soil, sand, gravel or rock, except as may be required for permitted uses within the Easement Area.

(h) **Watercourses**. The alteration or manipulation of watercourses located in the Easement Area or the creation of new water impoundments or watercourses for any purpose other than permitted uses of the Easement Area or enhancement of natural habitat or wetland values.

This Modoc Road bioswale filters the runoff feeding into the Modoc Preserve wetland recharges the groundwater and nourishes the trees' roots. Bioswales provide a way to conserve water, improve water quality, minimize the pollution in waterways and improve biodiversity in our burgeoning concrete jungles.

The MND states that "Storm run-off from the subject segment of Modoc Road and collector streets (Encore Drive, Via Zorro) drains to the Modoc Preserve via sheet flow and storm drain inlets where much of it infiltrates in this depressional area. Excess storm flow discharges via a small earthen channel to Cieneguitas Creek approximately 600 feet downstream (south) of Modoc Road." (Revised MND p. 73.)

The MND also states that "No changes in creek or storm drain locations, dimensions or hydraulic characteristics would occur. Therefore, no changes in drainage patterns would occur. The project includes minor realignment of a man-made drainage swale located south of Modoc Road; however, local drainage patterns would be maintained. The project would not involve an increase in impervious surfaces. Approximately 0 acres of impervious surfaces would be added when including reductions associated with the use of pervious materials and the removal of impervious surface portions of the existing bike lane associated with the multi-use path construction. This area would be dispersed over the 3,955-foot-long multi-use path alignment and would not substantially alter percolation rates or surface run-off in the project area." (Revised MND p. 75.)

Just having heavy equipment anywhere near the soil along this important drainage would degrade the soil. The MND further states "soil disturbance associated with recent restoration activities may have adversely affected this species" and "Northern California legless lizard is unlikely to occur along the multi-use path alignment due to soil compaction associated with roadway construction and maintenance, and existing trail use by pedestrians, bicyclists and equestrians." (Revised MND p. 37.) Yet, no mitigation is provided for this species' impact. (Revised MND p. 37 ["Northern California Legless Lizard. Suitable habitat for this species occurs at the Modoc Preserve. However, soil disturbance associated with recent restoration activities may have adversely affected this species if present. Northern California legless lizard is unlikely to occur along the multi-

use path alignment due to soil compaction associated with roadway construction and maintenance, and existing trail use by pedestrians, bicyclists and equestrians."].)

D. The County Has Failed To Consult With CDFW

An agency preparing an initial study must consult with all responsible agencies and trustee agencies responsible for resources affected by the project, under PRC §21080.3(a), and CEQA Guidelines § 15063(g). Consultation means the "meaningful and timely process of seeking, discussing, and considering carefully the views of others[.]" (See e.g., Gov't. Code, § 65352.4.) Thus, consultation is more than just sending a piece of paper to the State Clearinghouse. Here, there is no evidence that the County has consulted with the CDFW on this proposed Project, especially with respect to biological impacts relating to wildlife that are of concern to the CDFW as noted above.

E. The MND Fails To Conduct An Adequate Cumulative Impacts Analysis

The MND purports to address cumulative impacts by looking at other projects in the Goleta Area. (Revised MND p. 82, referencing MND Section 3.2.) However, MND Section 3.2 uses a list of project approach. (Revised MND p. 13.) A list of projects approach to cumulative impacts analysis requires the agency to create a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency. (CEQA Guideline Section 15130(b)(1).) However, here, the Revised MND only identifies projects that are pending, have recently been approved, and projects that are currently being constructed. This limited list excludes all probable future projects and prior projects with similar impacts as those of the instant proposed Project, such has oak tree removal, native grassland removal, special status plant removal and other biological impacts. Without a comprehensive list of projects causing related impacts, the MND's cumulative impact analysis is inadequate as a matter of law.

As just one example, while the list includes the Boulders Park Hills Estates residential development as a project under current development, it fails to address how the construction under the instant proposed Project would impact the mitigatory plantings in the Modoc Preserve that were required by the Park Hills Estate Project approval.

Respectfully submitted,

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