

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

September 17, 2012

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

*By hand delivery and by email to
sbcob@co.santa-barbara.ca.us*

RE: Park Hill Estates v.2; Appeal of the Planning Commission's September 5, 2012 Approval of Project No. 10TRM-00000-00001 and Adoption of its Revised Final Mitigated Negative Declaration

Dear Chair Farr and Members of the Board,

This office represents the Channel Islands Chapter of the California Native Plant Society and the San Antonio Creek Homeowners' Association (collectively "Appellants") in this matter. We hereby appeal the Planning Commission's September 5, 2012 3-2 approval of the Park Hill Estates v.2 Project (10TRM-00000-00001) ("Project") and adoption of the Revised Final Mitigated Negative Declaration ("MND") for the Project. This appeal is made on grounds alleged herein, that may be expanded upon in later submittals by this office, and on the additional grounds raised in the letter from Mr. Graham Lyons of Mullen & Henzell, LLP, submitted on our behalf to Mr. Alex Tuttle on July 18, 2011 and hereby incorporated by reference.

1. An EIR Is Required for the Project

The Planning Commission violated the California Environmental Quality Act ("CEQA") by adopting the MND when the record contains substantial evidence supporting a fair argument that the Project will have several potentially significant impacts. (*See* Pub. Res. Code § 21151; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151). This "fair argument test" only requires that substantial evidence in the record demonstrate that there is a *reasonable possibility* that that significant environmental impacts will occur (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309). Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, which includes the fact-based opinions of agency staff and decisionmakers, and relevant personal observations of area residents on nontechnical subjects. (CEQA Guidelines § 15384 (b); Pub. Res. Code § 21080 (e); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 928, 932; *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155). Additionally, conflicts with applicable plans and policies designed at least in part to protect the environment constitutes substantial evidence supporting a fair argument of a potentially significant land use impact. (*Pocket Protectors*, 124 Cal. App. 4th at 930). Where there is substantial evidence supporting a fair argument of a potentially significant impact, evidence to the contrary is not sufficient to support the adoption of an MND. (*Sundstrom*, 202 Cal. App. 3d at 309).

In this case, the existence of the following substantial evidence supporting a fair

argument of several significant impacts, demonstrates that the Planning Commission erred in adopting the MND for the Park Hills v.2 Project.

- The Environmental Report prepared by David Magney Environmental Consulting and submitted to Mr. Alex Tuttle on November 28, 2011, provides expert fact-based opinion that the Project may result in significant impacts biological resources including but not limited to native grassland habitat, wetland habitat, birds of prey, invertebrate wildlife species, and non-vascular plant species. (See CEQA Guidelines § 15384 (b); Pub. Res. Code § 21080 (e))
- Various stated comments, conclusions and opinions of County staff and Planning Commissioners, provide fact-based expert opinion that substantial evidence exists to support a fair argument of potentially significant biological impacts, impacts related to circulation, evacuation and fire safety and impacts to the aesthetics of this highly scenic site. (See *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155).
- Findings that were previously adopted by the County Planning Commission for the 2006 Negative Declaration and project approval for the 12-residential lot proposal provided that “The site would not be physically suited for the maximum density allowed by the site’s zoning (14 single family homes) due to site constraints.” (Finding 2.2.3.4; see *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155))
- The emergency access route for the Project fails to comply with the Fire Department’s minimum standards for roadway width, even with the newly required mitigation measure. This conflict with applicable standards designed to protect health and safety by ensuring safe evacuation routes constitutes substantial evidence supporting a fair argument of significant land use, fire, and public safety impacts. (See *Pocket Protectors*, 124 Cal. App. 4th at 930)
- The opinions of area residents regarding the significant impact the Project, with its reasonably foreseeable future phases (see Section 2, below), will have on the surrounding aesthetics, public and private views, community character, and open space values. (See *Pocket Protectors*, 124 Cal. App. 4th at 928; *Ocean View Estates Homeowners Ass’n Inc. v. Montecito Water District* (2004) 116 Cal. App. 4th 396, 402).
- Patent conflicts with policies in the Goleta Valley Community Plan designed to protect the environment, including biological resource protection policies BIO-GV-14 (requiring preservation of native grassland areas to the maximum extent feasible), DevStd BIO-14.3 (requiring onsite mitigation to minimize impacts on native grasslands), BIO-GV-15 (prohibiting the fragmentation of significant biological communities into non-viable pocket areas by development), and DevStd BIO-GV-15.3 (providing that on-site rather than off-site restoration shall be preferred), because the 2006 Mitigation Plan adopted as part of the 2006 Negative Declaration establishes that impacts to native grasslands could be further reduced and that onsite mitigation is feasible while the Project includes only offsite mitigation. (See *Pocket Protectors*, 124 Cal. App. 4th at 930).

2. The MND Is Legally Flawed

The Planning Commission violated CEQA in adopting a legally defective MND, which, among other things:

- Failed to consider the “project as a whole”, which includes evaluation of the impacts of the reasonably foreseeable residential development of the newly subdivided lots. (*See Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 396; *Orinda Assoc. v. Bd. of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171-1172).
- Utilized a baseline for analyzing the Project’s impacts to biological resources that does not reflect existing physical conditions as required, including with respect to native grasslands, invertebrate wildlife species, and non-vascular plant species. (*See CEQA Guidelines § 15125; Communities for a Better Environment v. South Coast Air Quality Management District (CBE v. SCAQMD)* (2010) 48 Cal. 4th 310).

3. The Planning Commission’s Findings Are Not Supported by Substantial Evidence

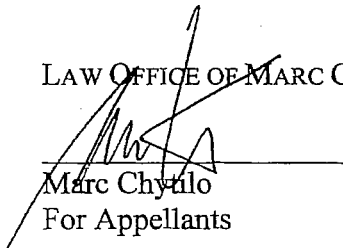
Many of the Planning Commission’s CEQA Findings are not supported by substantial evidence in the record, including findings that certain impacts are insignificant, that mitigation measures are adequate and enhanced mitigation is infeasible. The CEQA finding required to approve a negative declaration “that on the basis of the whole record, before it, that there is no substantial evidence that the Project will have a significant effect on the environment” cannot be made for reasons discussed in section 1, above. (*See CEQA Guidelines § 15074 (b)*). Additionally, a number of the Planning Commission’s findings that are required to approve the subdivision are not supported by substantial evidence, including that the map is consistent with applicable general and specific plans (*see Gov. Code § 66474*), that the site is physically suited to the proposed density of development (*id.*), and that the Project does not result in the potential creation of hazards to life or property from fire (County Code § 21-8 (c)(5)).

4. Conclusion

For reasons stated herein, we respectfully request that the Board grant our appeal of all Project approvals and order the preparation of an EIR for the Park Hills v.2 Project.

Sincerely,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo
For Appellants