

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Agenda Number:

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TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning and Development

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SUBJECT: Hearing on the Appeal by San Marcos Foothills Coalition and Small Wilderness Area Preserve of the County Planning Commission's Approval on July 27, 2005 of the Preserve at San Marcos project, 01TRM-00000-00005 (TM 14,585), 01DVP-00000-00071, 04EIR-00000-00003 [Appeal Case No. 05APL-00000-00019], located in the San Marcos Foothills on the east side of Highway 154, north of Foothill Road, Second Supervisorial District

Recommendation(s):

That the Board of Supervisors deny the appeal by San Marcos Foothills Coalition and Small Wilderness Area Preserve of the Planning Commission's approval (4-0 vote) of 01TRM-00000-00005 (TM 14,585) and 01DVP-00000-00071, certify the proposed final environmental impact report, 04EIR-00000-00003, and approve the Preserve at San Marcos project (Revised Alternative 4).

The Board of Supervisors' action should include the following:

1. Adopt the required findings for approval of the project, as reflected in the Planning Commission Action Letter dated August 1, 2005, provided in Attachment A, as revised by staff's recommendation in Section D of this Board letter;

2. Deny the appeal by San Marcos Foothills Coalition and Small Wilderness Area Preserve, upholding the Planning Commission's approval of 01TRM-00000-00005 (TM 14,585) and 01DVP-00000-00071;
3. Certify the proposed final Environmental Impact Report , 04EIR-00000-00003, as revised by the Planning Commission July 27, 2005 action, and adopt the mitigation monitoring program contained in Attachment A, the Planning Commission's Action Letter dated August 1, 2005; and
4. Grant *de novo* approval of the project subject to the conditions of 01TRM-00000-00005 (TM 14,585) and 01DVP-00000-00071, as reflected in Attachment B, the Planning Commission Action Letter dated August 1, 2005.

Refer back to staff if the Board takes other than the recommended action for appropriate findings and conditions.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Appellants San Marcos Foothills Coalition (SMFC) and Small Wilderness Area Preserve (SWAP) jointly appealed the County Planning Commission's July 27, 2005 action unanimously (by a vote of 4-0) approving the Preserve at San Marcos project. A copy of the appeal, prepared by the Environmental Defense Center (EDC) on behalf of the appellants, is attached hereto as Attachment B. The applicant's response to the appeal is contained in the letter from Laurel Fisher Perez, Suzanne Elledge Planning & Permitting Services, dated September 13, 2005 (Attachment C). Appellants' contentions are summarized and their merits discussed below.

The County Planning Commission unanimously approved the project as consistent with all applicable policy and ordinance requirements and certified the final environmental impact report (FEIR) as adequate. Staff is recommending that the Board deny the appeal, certify the FEIR, and approve the project subject to the conditions of approval in the County Planning Commission Action Letter, dated August 1, 2005, contained in Attachment A.

Staff is also recommending several, minor, "clean-up" revisions to the findings and conditions, as described in Section D of this Board Letter. These proposed revisions are intended to ensure consistency between project condition wording and the FEIR, clarify limitations on development allowable within the County Park on Lots 17, 20 and 21, and allow for phasing of project construction in two phases.

A. Background

Following a lengthy public review process spanning a total of nine public hearings, the County Planning Commission unanimously approved Revised Alternative 4, as described under Section B, Project Description, below, and certified the proposed final EIR (FEIR) on July 27, 2005. The Planning Commission's action was the product of multiple special hearings, considerable staff and consultant analysis, extensive public testimony and lengthy discussion by the Planning Commission over a period of nearly a year.

In evaluating the project proposal, the County Planning Commission considered the range of project alternatives evaluated by the FEIR. The Planning Commission determined that the Reduced Density Alternative 3 was the environmentally superior project alternative, but acknowledged that its ability to condition this project to reduce density was limited by Government Code Section 65589.5. (See Attachment A, County Counsel Memorandum dated September 27, 2005.)

The County Planning Commission also reviewed project options suggested by appellant SWAP. The SWAP proposal reconfigured development in the Terrace area (west project area) to cluster residences on the southern portion of the property in the vicinity of Lots 18-20. Staff and the County's EIR consultant reviewed and responded to the SWAP proposals in the FEIR Response to Comments (Vol. II) and at the Planning Commission hearings. The County also hired a financial expert, Ms. Marion Fong of Mariposa Real Estate Advisors, to evaluate financial feasibility. At the December 16, 2004 hearing, the County Planning Commission unanimously concurred with staff's and Ms. Fong's analysis that the SWAP proposals were not financially feasible and that additional study was not warranted.

To address potential impacts to two wetland areas that were brought to the County's attention during the Planning Commission hearing process by San Marcos Foothills Coalition, the Planning Commission directed staff at the March 3, 2005 hearing of the project to prepare and circulate a Draft EIR Recirculation Document and prepared responses to comments for inclusion in the proposed FEIR.

A separate EIR Revision Letter dated June 17, 2005 was also prepared to update the proposed FEIR to reflect changes to Alternative #4, revisions to the responses to public comments (RTCs) on the Draft EIR, and expanded analysis of issues already analyzed (including cultural resources, native grasslands, and private view impacts).

The project ultimately approved by the Planning Commission on July 27, 2005 (Revised Alternative 4) is the result of considerable deliberation by Planning Commission and numerous changes made to the project at public hearings in response to information presented to the Planning Commission. In addition to staff analysis and the formal environmental analysis contained in the FEIR, the Planning Commission read hundreds of pages of public comment letters and heard hundreds of hours of testimony by technical experts, the applicant, appellants and interested members of the public.

County Counsel sponsored a formal facilitation with appellants and applicants on September 22, 2005 in an effort to resolve the appeal. A second facilitation meeting has been scheduled for November 3, 2005. County Counsel will update the Board on the results of the facilitation in the County Counsel facilitation memo.

B. Project Description

Revised Alternative 4 of the Preserve at San Marcos project, evaluated in the proposed FEIR, is the project alternative approved by the Planning Commission on July 27, 2005. Revised Alternative 4 consists of the following components:

- Merger and re-subdivision of a 177-acre portion of the 377-acre subject property into 22 lots, not including a 200-acre designated remainder parcel;
- Construction of 15, market-rate, single-family residences and five affordable condominiums on 177 acres of the 377-acre subject property. Eight units would be located on the western "Terrace" portion of the project site (including the three units on Lots 12 through 14 relocated from near Cocopah Drive), seven in the center or "Meadows" portion of the project site at the northern terminus of Cieneguitas, five affordable condominiums adjacent to the current terminus of Cieneguitas.

In addition, this alternative proposes a 10-acre public park site for dedication to the County south of the proposed residences on "The Terrace." The remaining 200 acres of the property would be encompassed within a designated remainder parcel for donation to a land trust entity (Trust for Public Land or TPL). For a more detailed project description see Attachment C, Condition 1.

C. Appeal Contentions

Appellants cite a range of different concerns in their appeal, asserting both inconsistencies of the approved project with policy and ordinance standards and issues related to the adequacy of CEQA review. These issues have all been previously raised, discussed at length, and resolved in the FEIR and during the extensive proceedings before the Planning Commission.

Appellants' contentions on appeal and staff's responses to these contentions are as follows:

ISSUE 1: Clustering. (Appeal Letter, pp. 1, 10, General Plan Policies, Findings, Conditions)
Appellants assert that the project fails to cluster residential units to the maximum extent feasible in contravention of the Land Use Element planned development policies and PRD zoning requirements. Appellants claim that the project is inconsistent in this regard with the following policy and ordinance provisions:

LUE Planned Development Policies:

1. *The purpose of the Planned Development designation shall be to ensure coordinated, well-planned development of large areas designated for residential use within urban areas defined in the Land Use Element of the Comprehensive Plan. Areas designated for Planned Development may include parcels which are subject to topographic, geologic or other constraints such as steep slopes, unstable soils and flood hazards, or parcels with significant scenic or resource values. The intent is to provide for flexibility and innovative design of residential development in order to avoid development in hazardous areas, protect environmentally sensitive habitats and archaeological sites, preserve the maximum amount of open space, and provide other public benefits.*
2. *The entire area designated for Planned Development shall be planned as a unit. Preparation of a specific plan (Government Code Section 65450) may be required when parcels comprising a site designated as PD are in separate ownerships.*
3. *Use of flexible design concepts, including clustering of units, mixture of dwelling types, etc., shall be required to accomplish as much as possible all of the following goals:*
 - a. *protection of the scenic qualities of the site;*
 - b. *protection of resources, i.e., habitat areas, archaeological sites, etc.*
 - c. *avoidance of siting of structures on hazardous areas;*
 - d. *provision of public open space and recreation;*
 - e. *preservation of existing healthy trees; and*
 - f. *provision of adequate urban services (e.g., water, sewer, streets).*

Sec. 35-223.1. Purpose and Intent

It is the purpose of this district to ensure comprehensively planned development of large acreage within designated urban areas that are intended primarily for residential use. The intent of this district is to:

1. *Promote flexibility and innovative design of residential development, to provide desirable aesthetic and efficient use of space and to preserve significant natural, scenic, and cultural resources of a site;*
2. *Encourage clustering of structures to preserve a maximum amount of open space;*
3. *Allow for a diversity of housing types; and,*
4. *Provide recreational opportunities for use by both the residents of the site and the public.*

Sec. 35-223.6. Findings Required for Approval of Development Plans.

In addition to the findings for Development Plans set forth in Sec.35-317.7. (Development Plans), no Preliminary or Final Development Plan shall be approved for property zoned or to be rezoned to PRD unless all of the following findings are made: . . .

1. *That the density and type of the proposed development is in conformance with the PRD District and applicable Comprehensive Plan policies.*

2. *That adequate provisions have been made within the proposed covenants, conditions, and restrictions to establish permanent care and maintenance of public and common open spaces and recreational areas and facilities.*
3. *That the buildings and structures are clustered to the maximum extent feasible to provide the maximum amount of contiguous open space.*

Although not referenced in the appeal, the following Land Use Element policies also apply to clustering on the site:

Cieneguitas Creek Planned Development: *The following policies shall be applicable to the Planned Development Designation on the Cieneguitas Creek property:*

- a. *A maximum of 75 residential units may be developed on the site. All residential units shall be located outside of the following constraint areas: identified archaeological sites, riparian areas associated with Atascadero and Cieneguitas Creeks, Rincon formation areas in the southern and eastern portions of the site, and oak woodlands dispersed throughout the site.*
- b. *Development within buildable areas (i.e., outside of the constraint areas defined above) on the western portion of the site shall be clustered. To minimize visual impacts, buildings shall not exceed 25 feet in height and shall be finished in color tones which blend with the surrounding natural environment. Extensive landscaping shall also be used to mitigate visual impacts.*
- c. *Development within the older alluvium areas outside of the constraint areas on the eastern portion of the site shall be limited to single-family lots of one or more acres in size.*
- d. *Development on portions of the site that exceed 30% slopes which are located outside constraint areas should be limited to single-family lots of five or more acres in size.*
- e. *Development within the constraint areas defined above shall be limited to service systems such as interior streets, water, sewer, and other utilities necessary to serve the site. Such development shall be sited and designed to minimize adverse impacts on environmentally sensitive habitats, archaeological areas, and groundwater resources. Identified constraint areas shall be held in open space in perpetuity.*
- f. *At the time of project approval, the County shall make the finding that the proposed water supply is adequate to serve all potential development on the site (including single-family lots) without overdrafting affected groundwater basins.*

Staff Response:

The Planning Commission concluded that concentration of development in two clusters on less than 25 percent of the project site meets all applicable policy and zoning requirements and maximizes clustering of development on the project site to the extent feasible. The residential areas have been grouped on the site in two clusters: Lots 1-5 and 12-14 on the Terrace portion

of the site and Lots 7-11 and 15-16 on the Meadows portion of the site. The landscape development envelopes (LDEs) have been grouped to maximize the amount of contiguous open space left in the surrounding private conservation areas (PCAs), consistent with the project objectives and other policy limitations. (For example, the LDE on Lot 5 is not contiguous with the LDEs on Lots 12-14 to allow a corridor for wildlife movements between these home sites.) Fundamentally, because the number of units in the approved project is well below the 75 units allowed by the existing land use designation and zoning of the site, the overall density of development on the project site is reduced below that which would be result from a higher number of similarly sized homes. The two clusters of residential development have been sited to avoid to the maximum extent feasible environmental constraints identified by the FEIR.

As approved by the Planning Commission, the project clusters 20 units on 40.97 acres, or 23.1 percent, of the 177.47 acre site (not including the 200-acre Designated Remainder). Under the approved project design, a total of 136.5 acres would be kept in open space (36.20 acres in dedicated parkland and public open space and 100.30 acres in private conservation easements). Thus, 76.9 percent of the site remains in open space. If the additional area of the Designated Remainder is taken into account, then the developed area amounts only to 10.9 percent of the property as a whole.

Table: Site Coverage¹

	Area (acres)	% of Project Area	% of Project + D.R.
Development Envelopes	40.97	23.1%	10.9%
Private Conservation Easements	100.30	56.5%	26.6%
Dedicated Public Open Space	36.20	20.4%	9.6%
Total Project Area	177.47	100.0%	47.0%
Designated Remainder (D.R.)	200.00	-	53.0%
Total Project Area + D.R.	377.47	-	100.0%

The more general requirements of the Land Use Element and PRD zone district for projects within the PRD zone district to “preserve the maximum amount of open space” must be understood in the context of the specific, numerical requirements for minimum open space and maximum building coverage. The County’s Land Use Element (Planned Development Policy #6) and the PRD zone district (Art. III, Sec. 35-223.16) require that no less than 40 percent of the gross acreage of the site be left in open space. Based on the project’s affordable housing component, the project is also entitled to an additional ten percent reduction in required open space, reducing required open space to 30 percent of the project area. Section 35-223.12 also limits building coverage of the net area of the property of 30 percent for dwelling units and 50 percent for total building coverage. As shown in the table above, with total open space of 76.9 percent, the approved project would far exceed the minimum 40 percent open space requirement allowed by the zone district and 30 percent open space requirement with the affordable housing incentive. Building coverage of 23.1 percent is also well below the maximum 30 percent building coverage requirement of the PRD zone district. Condition 85 requires the recordation of scenic area

¹ Site coverage figures are based on the project plans approved by the Planning Commission on July 27, 2005.

easements over the private conservation areas on all residential lots (Lots 1-15) and Lot 22, ensuring that no development can take place in these areas.

The County Planning Commission's approval took into account certain limitations to project conditions and alternatives imposed by law. Although a smaller development footprint could potentially further reduce environmental impacts, project feasibility (legal and financial) poses a fundamental limitation on the degree to which the size and density of the project can be reduced. The FEIR recognized that Reduced Density Alternative #3 is environmentally superior to the other project alternatives. However, in considering project alternatives, the County Planning Commission nevertheless acknowledged limitations as to financial and legal feasibility placed by CEQA and Government Code Section 65589.5 on its ability to consider reduced density alternatives. Financial analysis prepared by Marion Fong of appraisal information demonstrates that further reduction in density of development on the site would result in lower market values that render the project financially infeasible. Based on Marion Fong's analysis and other information presented, the Planning Commission determined that both Alternative #3 and the Reduced Density Alternative are financially infeasible. The Planning Commission also found the appellant SWAP's proposal that concentrated development on less area on the site to be financially infeasible. Government Code Section 65589.5 also places legal limits on the County's ability to condition affordable housing projects to reduce density so that the reduced density alternatives are also legally infeasible.

ISSUE 2: Project Scale and Visual Impacts. (Appeal Letter, pp. 1-3, 6, 10, General Plan Policies, County Code, Zoning Ordinance, CEQA Issues, Conditions) Appellants contend that the scale of proposed homes is too large and out of keeping with the character of the existing community and that proposed development would impact views. In particular, appellants are concerned that views from Highway 154 would be impacted and assert that all structures should be limited to 22 feet in height per Condition 7. Appellants claim that the project is inconsistent in this regard with the following policy and ordinance provisions:

Scenic Highways Element

Land Use Element Visual Resources Policy 3: *In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.*

SBC, Chapter 35, Art. III, Ridgeline and Hillside Development Guidelines, Section 35-292b.3:

Urban Areas:

- A. *The height of any structure should not exceed 25 feet wherever there is a 16 foot drop in elevation within 100 feet of the proposed structure's location. (See definition of building height)*
- B. *Proposed structures should be in character with adjacent structures.*

- E. *Development on ridgelines shall be discouraged if suitable alternative locations are available on the parcel.*

Section 35-212, Visual Resources Development Standards:

1. *In areas designated as rural on the Land Use Element Maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms, shall be designed to follow the natural contours of the landscape, and shall be sited so as not to intrude into the skyline as seen from public viewing places.*
2. *In areas designated as urban on the Land Use Element maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.*

Staff Response:

The Planning Commission determined that the project as approved and conditioned is compatible with the scale and character of surrounding neighborhoods and the natural environment and protects views. Appellants object principally to the scale and visibility of development to be located on the Terrace lots on the West Mesa. The FEIR evaluates visual impacts of the approved project and consistency with policy and concludes that the project is consistent with policy. The EIR Revision Letter evaluates policy consistency of Revised Alternative #4 and concludes that the natural topography and existing vegetation screen the project from important public views, especially from scenic Highway 154.

In concluding that views of the project from Highway 154 would be limited, the FEIR notes in particular that the Terrace development areas would essentially be hidden from foreground views (less than 1,500 feet) and visible only from middle distance (1,500 feet to 1 mile) and distant locations. At these distances, impacts to views would be greatly attenuated. Development locations within the Meadows portion of the site would not be noticeable from Highway 154 and due to irregular hilly terrain would be of limited visibility from private residences and local streets. The project would not block views of scenic mountain skylines or coastal panoramas from private residences and Highway 154 or other main vehicle routes. FEIR, Vol. II, Section 8.1 at 8-9.

Condition 7 limits the height of the single-family residence on Terrace Lot 2 to 22 feet in order to minimize views of the structure from Highway 154. Given the topography and view angles, the FEIR concluded that the same restriction was not required for other structures on the upper Terrace lots in order to protect views. Height of all structures is consistent with the 25-foot height limit applicable to urban ridgeline development under the zoning ordinance. Ten of the single-family residences (Meadows Lots 6-15) would be one-story structures substantially below the allowable height limit. Condition 15 requires that existing pepper trees be retained on site as screening for existing residential structures (Lots 7, 8, 9, 10 and 16).

The FEIR determined that the residential development in both the Terrace and Meadows areas are consistent with the scale and character of existing development in the community. Homes on Terrace Lots 1-5 would be two-story in a rural Italian style and range from 4,100 to 8,700 square feet. Homes on Terrace Lots 12-14 are one-story designs in a Ranch/Hacienda style and would range from 3,400 -3,800 square feet with heights between 13.5 and 16.5 feet. Homes on Meadows Lots 6-11 and 15 in a Rural Ranch/Farmhouse style would range from 3,800 to 5,150 square feet with heights ranging between 15 and 22 feet. Finally, the five, two-story, affordable units on Lot 16 would range from 1,455 to 1,772 square feet. The FEIR concluded that these structures were of similar size, bulk and mass as many existing homes in surrounding neighborhoods, especially to the northeast of the project site. The architectural styles of the residences were assessed by the FEIR as appropriate to the site and a further assurance that development would be compatible with the surrounding neighborhood. Conditions 4, 8 and 105 require review and approval of the design, scale, and character of the project's architecture and landscape architecture by the Board of Architectural Review (BAR). Conditions 5 and 6 require use of natural building materials and colors compatible with surrounding terrain for all components of the development. Condition 106 additionally requires BAR approval of Architectural & Landscape Design Guidelines to be recorded with the final map. BAR has reviewed this project conceptually on several occasions (06/08/01, 07/27/01, 09/06/02, and 11/22/02) and provided largely positive comments which have been incorporated into the design. In particular, the BAR voiced its agreement with the clustering concept, the house siting and design concept, and the sizing of homes on the western (Terrace) portion of the project, given the elegant simplicity of the proposed architectural style. (As required by the project conditions, the project will return to the BAR for preliminary and final approval of building architecture and landscape design following action by the Board of Supervisors.)

Condition 9 sets forth requirements for exterior nightlighting, including that all exterior night lighting be of low intensity, low-glare design and be downward hooded. This condition requires preparation of a Lighting Plan for review and approval of P&D and the BAR. Condition 43 places similar limitations on lighting within landscape development envelopes (LDEs) and the park, and prohibits nightlighting within the park and PCAs entirely. As conditioned, the project prevents light pollution and protects nighttime views.

ISSUE 3: Designated Remainder. (Appeal Letter, p. 1, 4, General Plan Policies, CEQA Issues) Appellants contend that the project analysis should include the Designated Remainder area and assert that, by not including it, the project fails to plan the property as a unit.

Staff Response:

The provisions of the Subdivision Map Act allow designation of a remainder piece that is not a parcel for the purposes of the subdivision map. Condition requirements may not be imposed on a Designated Remainder (D.R.) until such time as any required permit or approval for development is issued (Gov. C. Section 66424.6(a)). The D.R. is not part of the Preserve at San Marcos project for permitting and map approval purposes and no development is proposed on the D.R. The FEIR did evaluate impacts of the proposed project to areas outside the project site,

including the D.R. However, because the D.R. is not part of the project, the D.R. is therefore beyond the scope of the environmental analysis required by CEQA. Per the project description, the D.R. will be independently conveyed to a non-profit land conservation organization, the Trust for Public Land (TPL), concurrent with map recordation. Consistent with its mission, TPL intends to hold the land in open space and no future development of the D.R. is contemplated.

ISSUE 4: Avoidance of Sensitive Habitat Areas. (Appeal Letter, pp. 1-3, 10-11, General Plan Policies, Zoning Ordinance, Conditions) Appellants contend that sensitive habitat areas have not been avoided to the maximum extent feasible. Appellants assert that native grasslands and other biological resources were mapped incorrectly. Appellants claim that the project is inconsistent in this regard with the following policy and ordinance provisions:

ERME Category C: *Urbanization could be permitted only in appropriate instances, subject to project plan review and imposition of specific conditions to protect against hazards and to preserve the integrity of the land and environment.*

- *150 feet on either side of potentially active earthquake fault zones.*
- *Areas with unknown flood hazard.*
- *Areas of significant biological value.*
- *Areas of high scenic value.*
- *Scenic corridors.*
- *Open space suitable for outdoor recreation.*

Article III Development Standards, Section 35-215 prohibits development on significant habitats and/or prime examples of common ecological communities:

2. *Urbanization should be prohibited except in a relatively few special instances on lands subject to one or more of the following environmental factors: . . . Significant habitats and/or prime examples of common ecological communities (see Environmental Resource Management and Conservation Elements).*

Staff Response:

The Planning Commission determined that the project as approved and conditioned avoids sensitive resources on the site the maximum extent feasible based on accurate biological resource mapping. As discussed in greater detail below in connection with CEQA baseline condition mapping, the FEIR studied in depth and correctly mapped biological resources on the project site. Environmental analysis of the project began by mapping these resources as site constraints and the design of the project was revised to avoid the most sensitive areas of the site. The project avoids such resources to the maximum extent feasible consistent with policy and

zoning restrictions. Numerous project conditions put in place elaborate protections for biological resources on site.

Native Grasslands. The Preserve at San Marcos site contains one of the largest remaining native grasslands on the south coast. The FEIR evaluated project impacts to native grasslands based on native grassland mapping performed by Watershed Environmental and others, applying the native grasslands definition and impact threshold in the County Environmental Thresholds and Guidelines Manual. The total area of native grasslands mapped by Envicom on the project site is 56.26 acres (FEIR, pg.4.4-3). As shown in Attachment D, Table 2, the FEIR concluded that Revised Alternative #4 would impact a total of 8.38 acres of native grasslands (6.29 acres would be impacted by roads and LDEs and 2.09 acres by fuel modification zones). Thus, the project as approved by the Planning Commission would impact approximately 15 percent of native grasslands on site, leaving approximately 85 percent preserved. Condition 18 requires that all impacted native grasslands be mitigated to the maximum extent feasible by native grassland restoration, at a minimum 2:1 ratio (2 acres restored/1 acre impacted). This Condition also requires fencing to avoid preserved native grassland areas during the construction phase, and avoidance of grasshopper sparrow nesting areas during the grassland restoration phase.

The FEIR considered a range of project alternatives, including Revised Alternative #4, the alternative design ultimately approved by the Planning Commission. As Table 2 shows, the area of native grasslands impacted by Revised Alternative 4 would be less than what would have been impacted by the originally proposed project. The originally proposed project would have impacted 11.16 acres per the September 2004 proposed FEIR and 13.99 acres per the May 2004 DEIR. (The difference in impacted area between the FEIR and DEIR can be accounted for by a reduction in the required fuel management zone radius from 200 to 100 feet.) The FEIR considered other alternatives, such as Alternative 3 (elimination of Lots 12, 13, and 14), which would have reduced native grassland impacts still further, but these alternatives were deemed legally and financially infeasible, as discussed below.

Wetlands. The Recirculation Document (FEIR Volume IV) identifies direct impacts to 0.40 acres of slope wetlands within Polygon 10 identified by the Glenn Lukos 2005 wetland delineation, which is located within the LDEs of Meadows Lots 10 and 11. The Glenn Lukos wetland delineation characterized the Polygon 10 wetlands as lacking a predominance of wetland vegetation and exhibiting only limited wetland functions. Condition 20 requires the applicant to implement a Wetland Mitigation Plan that would create two slope wetland mitigation areas on Lots 9 and 18 at a greater than 3:1 mitigation ratio. Replacement wetlands in kind, successfully implemented per Condition 20 (Mitigation Measure 4-2), are intended to provide higher quality wetland habitat than the degraded wetland areas impacted.

Coastal Sage Scrub. The FEIR determined that elements of the project including LDEs and access/utility corridors would impact a total of 2.89 acres of coastal scrub habitat on site (mostly on the west side of the Meadows area: lots 8, 9, 10 and 11). According to the FEIR, these impacted coastal scrub areas do not contain any special status plant species. Some areas contain an understory of purple needlegrass. Condition 19 requires preparation of a Coastal Sage Scrub Mitigation Plan designed to meet the same restoration standards as the Native Grassland

Restoration Plan. Mitigation of coastal sage scrub impacts would include restoration at a minimum 2:1 replacement ratio.

ISSUE 5: Wastewater Disposal. (Appeal Letter, p. 2-4, County Code, RWQCB Basin Plan) Appellants contend that wastewater disposal via septic systems using the drywell method of disposal for units on Lots 1-5 and 12-14 is inconsistent with the Regional Water Quality Control Board (RWQCB) Basin Plan and County Code and that drywells may not be used on Lots 1-5 because leach lines are feasible.

Staff Response:

Based on analysis provided by County Environment Health Services, the Planning Commission determined that septic disposal on Terrace Lots 1-8 is consistent with all applicable County and State requirements. As approved by the County Planning Commission, development on the Terrace lots would be served by septic systems (Lots 1-5 utilize dry wells and Lots 12-14 utilize leach fields). Based on testimony by the County geologist and County Environment Health and Safety (EHS) staff, the Planning Commission concluded that wastewater disposal on the Terrace lots would be accomplished consistent with the all RWQCB Basin Plan and County requirements.

Underlying geology in the Terrace area places constraints on the type of septic system that may be utilized. In particular, test borings revealed a relatively shallow impermeable clay layer underlying Lots 12 through 14 that renders use of drywells infeasible on those lots. However, percolation tests in those locations demonstrate that leach line disposal is feasible consistent with the RWQCB Basin Plan. Accordingly, County EHS staff opined that standard leach line systems could serve the development on Lots 12-14 consistent with all RWQCB and County requirements. EHS staff also stated at the July 27, 2005 County Planning Commission hearing that the required 100-foot setback of leach fields from any wetland area provides adequate filtration and treatment to protect water quality and wetland biology.

Conversely, leach field percolation tests conducted in August 2001 by Padre Associates, the applicant's consultant, for Lots 1 through 5 failed to meet minimum percolation rates, making leach lines infeasible. Based on that information, County EHS concurred with Padre Associates' conclusion that dry wells were necessary to allow wastewater disposal on Lots 1-5. Based on test borings establishing the depth of underlying impermeable clay layer in that location, EHS concluded that drywells on those lots would meet all applicable requirements under the RWQCB Basin Plan and County Code, in particular the minimum vertical offset from the clay layer.

ISSUE 6: Incompatible Uses. (Appeal Letter, p. 2, General Plan Policies) Appellants contend that recreational uses in mitigation wetland and grasshopper sparrow breeding habitat would cause environmental degradation. Appellants claim that the project is inconsistent in this regard with the following policy and ordinance provisions:

Land Use Element Other Open Lands Policy 3:

- 3. Appropriate recreational uses will be of light intensity with minimal environmental degradation in open land areas.*

Staff Response:

After listening to extensive expert and public testimony, the Planning Commission concluded that proposed recreational uses, including trails and hang glider landing, were compatible with their proposed settings and consistent with policy and ordinance requirements. Although this project is not located on land designated as Other Open Lands and therefore the policy above is not applicable, staff discussed the policy because the property is one of the largest remaining areas of open space in the south coast urban area. Land Use Element Open Lands Policy 3 allows light intensity recreational uses within minimal environmental degradation in certain habitat areas. The FEIR concluded that, once vegetation in wetland restoration areas has become established, use of such areas for limited hang-glider landing would be compatible. The Wetland Mitigation Plan required by Condition 20 (Mitigation Bio 4-2) requires that wetland restoration areas be fenced for a period of one year from completion of planting to allow wetland vegetation to become established before any hang-glider landing may take place there. So conditioned, the contemplated recreational uses are consistent with LUE Open Lands Policy 3 and other policy requirements.

Similarly, only light recreational uses such as hiking and bird-watching would be allowed in grassland areas onsite which provide grasshopper sparrow habitat, consistent with policy.

ISSUE 7: Alteration of Natural Terrain. (Appeal Letter, p. 2, General Plan Policies)

Appellants contend that less alteration of the natural terrain, natural vegetation and natural landforms is possible with a more clustered design. Appellants claim that the project is inconsistent in this regard with the following policy and ordinance provisions:

Land Use Element, Hillside and Watershed Protection Policies:

- 1. Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.*
- 2. All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

Staff Response:

The approved project minimizes cut and fill on the site, minimizes site preparation and protects landforms and vegetation consistent with LUE Hillside and Watershed Protection Policies 1 and 2. Revised Alternative #4 as approved by the Planning Commission involves a total of approximately 44,970 cubic yards of cut and 34,895 cubic yards of fill for the project, comprised as follows: 25,130 cubic yards of cut and 22,100 cubic yards of fill for construction of the Meadows SFD lots; 500 cubic yards of cut and 100 cubic yards of fill for construction of the affordable condos; and 19,340 cubic yards of cut and 12,695 cubic yards of fill for construction of the Terrace lots. Because the project's 20 units falls well below the allowable density on the project site, the volume of grading is far below that which would be required for a denser development proposal. For example, the total volume of grading associated with the approved project represents a reduction of more than 2/3 from earlier projects proposed on the property, most notably, the 75-unit Bridle Ridge project (1999). Some amount of grading is unavoidable with any development configuration in order to create building pads, given that much of the project site is sloped. Grading volumes have been minimized, taking into account the sloping site topography. An effort has also been made to balance cut and fill volumes on site. Grading is limited to areas within the designated LDEs and access/utility corridors. No other portion of the project site would be disturbed. Revised Alternative #4 avoids all development on the knoll on Lot 22, further reducing the volume of graded needed for project construction.

The approved project has also been designed to fit the site topography, soils, geology and hydrology and protect natural landforms, vegetation and features consistent with LUE Hillside and Watershed Protection Policy 2. Revised Alternative #4 relocates residential units proposed under the original project description from an area of steeper slopes underlain by Rincon Formation on Lot 22 to an area of low to moderate constraints within the Terrace area and thereby avoids geologic hazards posed by steeper slopes and Rincon soils. No other project elements are subject to natural hazards such as flooding, unstable soils, slopes in excess of 20%, or other similar geologic/topographic conditions. Earthquake faults have also been avoided consistent with County policy. The LDEs and access/utility corridors have been designed to avoid native trees onsite.

CEQA Contentions:

ISSUE 8: Accuracy of Baseline. (Appeal Letter, pp. 1, 4 General Plan Policies, CEQA Issues)
Appellants contend that the County did not follow its adopted Thresholds and Guidelines Manual with regards to mapping native grassland and wetland habitats, underestimating impacts to these areas.

Staff Response:

The Planning Commission determined that mapping of biological resources on site, including native grasslands and wetlands, was accurately performed based on recent fieldwork in

conformity the County's Environmental Thresholds and standard professional practice. Baseline information contained in the FEIR is accurate to an acceptable level of precision.

Native Grasslands. The FEIR evaluated project impacts to native grasslands based on native grassland mapping performed by Watershed Environmental and others, applying the native grasslands definition and impact threshold in the County Environmental Thresholds and Guidelines Manual. The total area of native grasslands mapped by Envicom, using Watershed Environmental (WE) data, on the project site is 56 acres.

EDC has suggested that Envicom/WE's mapping of native grasslands is inadequate because its results differ from other mapping efforts. In particular, appellants point out that there is a discrepancy between the grassland acreages as accounted for by Rachel Tierney for the Bridle Ridge Project (71 acres of native grasslands on a 377-acre property), by DMEC for the Bridle Ridge project (199 acres of native grasslands on a 377-acre property), by Rincon in the Bridle Ridge Final EIR (173 acres of native grasslands on a 377-acre property), and by Watershed Environmental (WE) for the Preserve at San Marcos (98 acres of native grasslands on the 377-acre property, including 56 acres within the 177-acre project area). However, as discussed in the FEIR Revision Letter, this discrepancy can be accounted for as follows: (1) DMEC takes a broader view of native grasslands (a view that is not consistent with the County's Thresholds Manual, which WE used as a basis for their mapping); (2) the fact that the vegetation and native grasslands *currently on site* (as studied for this EIR) may be different than they were seven or eight years ago (1998) when DMEC conducted surveys (the EIR Revision Letter clearly represents the differences in opinion regarding the broader view of grasslands on the Preserve site, see page 22 and 23 of the Revision Letter); and (3) there are two different project areas being addressed: much of the acreage depicted by DMEC is located in what is now identified as the Designated Remainder parcel and not part of the project. DMEC's depictions are not considered mapped surveys. What is important in this discussion is what the FEIR indicates is present on the 177-acre Preserve project site, not what WE identified on the larger 377-acre property. Attachment D, Table 1, compares native grassland mapping projects.

The FEIR Revision Letter contains a lengthy discussion of native grassland sampling and mapping methodology, based on the County's definition and established practice as contained in the Environmental Thresholds and Guidelines Manual. The native grasslands present on this site are mapped consistently with other County projects and the maps, in the opinion of County staff, are accurate. Additionally, native grasslands found on site most closely follow the "Purple Needlegrass Alliance" (Manual of California Vegetation). Native grassland community boundary mapping relied primarily on testing for the presence of the dominant native grass, (in most cases, purple needlegrass - *Nasella pulchra*), to determine if (and where) it exceeded the County's 10 percent relative cover criteria, as contained in the Thresholds. This native grassland plant community does, however, contain many additional species, and there are many "subtypes" of the native grassland community present on the parcel. Most of these subtypes are preserved under the proposed alternative. The FEIR Revision Letter also recognized the presence of other native grasses, especially meadow barley (*Hordeum brachyantherum*), and increased the mapped native grasslands area by 0.29 acres to account for this species.

Wetlands. Wetland delineations following the U.S. Army Corps of Engineers 1987 Wetland Manual and the County Environmental Thresholds were prepared by Envicom (identifying 2.86 acres of CDFG wetlands) and by Glenn Lukos Associates based on data collected in Winter and Spring 2005 (identifying 0.41 acres of wetlands). The Glenn Lukos final wetland delineation, after considering information provided by the appellants (See FEIR, VOI V, Response to Comments on Draft Recirculation Document), identified two wetland areas (Polygons 10 and 22), totaling 0.41 acres, in the impact area of the project. The wetland delineation and the corresponding discussion in the FEIR, Vol. IV, pg. 22) notes that the Polygon 10 wetland (0.40 acres, located in the “Meadows” area) “exhibits limited wetland functions” based on a lack of predominant hydrophytic vegetation. These wetland delineations carefully and correctly mapped existing wetlands baseline conditions on site. In conducting these delineations, the consultant used the Corps’ 1987 delineation methods and the County’s adopted wetland definition, commonly referred to as the Cowardin definition (FWS, 1979). Delineating wetlands using the Cowardin definition can result in wetlands being identified when only one wetland indicator (hydrophytic vegetation, hydric soils, or wetland hydrology) is present (as opposed to all three, which the Corps requires). In the case of Polygon 10, initially, two parameters were found to be present (wetland hydrology and hydric soils). After further analysis on May 28th, GLA found that a number of data points contained hydrophytic vegetation, thus that area meets all three wetland criteria.

ISSUE 9: Piecemealing, Project Description Accuracy. (Appeal Letter, pp. 1, 4, General Plan Policies, CEQA Issues) Appellants contend that environmental review of the project fails to address impacts and plan for the project as a whole, does not address impacts of the DR or the park as part of the project, does not address necessary infrastructure (especially a Goleta Water District storage tank), and contains project description inconsistencies (future uses, ownership and management of the DR and management of the PCAs)

Staff Response:

As discussed above, the DR is not legally a part of the subdivision or project for purposes of environmental review under CEQA. As a separate action, the DR would be transferred to TPL and managed as open space without change of open space use under the existing zoning. The FEIR does evaluate of impacts of the proposed project to surrounding areas, including the DR, which would not be significantly affected by the project.

Although the FEIR contains only a conceptual plan for the County park area and any future park plan would require additional permits, the FEIR nevertheless evaluates potential impacts of the conceptual park proposal together with the potential impacts of the rest of the project. Should any eventual more detailed park plan differ markedly from the conceptual plan presented, additional environmental review could be required. However, evaluation of the conceptual park plan adequately evaluates potential impacts and meets the requirements of CEQA.

Under the project as approved by the County Planning Commission, PCAs would be managed and conditions enforced for the first five years by the County with a County-approved biologist and thereafter by the Homeowners Association. Failure of property owners to abide by conditions of approval with regard to the PCAs could result in permit violations and enforcement actions initiated by the County.

In a letter dated February 20, 2003, the Goleta Water District has written that no additional storage tank is required to serve the project. No storage tank was approved as part of the project.

ISSUE 10: Impact Avoidance/ Mitigation to Maximum Extent Feasible. (Appeal Letter, pp. 1-2, 5-6, 9-11, General Plan Policies, CEQA Issues, Findings, Conditions) Appellants contend that the project fails to avoid impacts and mitigate to the maximum extent feasible, and that it is feasible to cluster further or reduce density to reduce footprint. Appellants are especially concerned about the following impacts:

Class I Impacts: Loss of Overall Site Vegetation (Bio-1); Loss of Native Grasslands (Bio-2); Wildlife Species and Habitat Loss (Bio-8); Habitat Fragmentation / Wildlife Movement (Bio-11); Decline of Rare Wildlife Species (Bio-10)

Class II Impacts: Loss of Rare Plant Species (Bio-5); Loss of Coastal Sage Habitat Impact Bio 3, Wetlands Impacts, Visual Resources Impacts

Staff Response:

The Planning Commission determined that the project does avoid and mitigate impacts to the maximum extent feasible and that further clustering is not feasible. As discussed above, environmental analysis of the project began by mapping sensitive resources as site constraints and the design of the project was revised to avoid the most sensitive areas of the site. The project avoids biological resources to the maximum extent feasible consistent with project objectives and policy and zoning restrictions. A total of 71 project conditions (Conditions 4 through 74) implement FEIR mitigation measures and put in place elaborate protections for biological resources on site. These mitigation measures mitigate Class I impacts to the maximum extent feasible and reduce Class II impacts to insignificant levels. Some of the central conditions that protect resources and mitigate impacts on site include the project conditions related to Aesthetics/Views (Conditions 4-9), an Open Space Management Plan, Integrated Pest Management Plan, Pepper Tree Retention Plan (Condition 15), a Native Grassland Restoration Plan (Condition 18), a Coastal Sage Scrub Mitigation Plan (Condition 19), Wetland Mitigation Plan (Condition 20), a Lots 1&2 PCA Trail Plan (Condition 21), a Sensitive Plant Survey and Protection Plan (Condition 22), a Boulder Removal Plan (Condition 23), a Weed Management Plan (Condition 25), a Woodland Protection Plan (Condition 29), Private Conservation Easements (Condition 32), a Burrowing Owl Protection Plan (Condition 34), water quality protection plans (Best Management Practices Plan, Storm Water Pollution Protection Plan, an Storm Water Quality Management Plan) (Conditions 39-41, 71 – 74), and conditions protecting

cultural resources (Conditions 45 – 47). The full project conditions are contained in the Attachment A, the Planning Commission action letter dated August 1, 2005.

For each of the impacts cited by appellants, the appellants contend that impact level could be reduced by clustering the project further and reducing the footprint of the project's residential component on the land. As discussed above, based on information presented by County consultant Marion Fong, the County Planning Commission determined that project alternatives that reduced project footprint, such as Reduced Alternative # 3 would not be financially feasible. Additionally, the Planning Commission determined that the reduced footprint SWAP proposal was not financially feasible.

With respect to mitigation for loss of Coastal Sage Habitat, Condition 19 adjusts the mitigation ratio for coastal sage scrub impacts to 2:1 due to the lack of any special status plant species in any Landscape Development Envelope (LDE) or access/utility corridor. The County Environmental Thresholds do not specify a replacement ratio for coastal scrub impacts. A 2:1 replacement ratio is generally consistent with past County practices. Similar to native grassland mitigation, a 2:1 replacement ratio is adequate to ensure that impacts to coastal sage scrub are fully mitigated.

Appellants' contentions with respect to classification of and adequacy of mitigation for visual resource impacts and wetland mitigation are addressed above in response to Issues 2 and 8, respectively.

ISSUE 11: Definition of Rare Plants. (Appeal Letter, pp. 5-6, CEQA Issues) Appellants contend that the Condition 22 (Impact Bio-5) fails to use the correct CEQA definition of rare plants by limiting required rare plant replacement to California Native Plant Society lists 1B and 2 only, excluding various other rare species such as Vernal Barley, Club-haired Mariposa Lily, and Santa Barbara Bedstraw. Appellants object that the initial replacement ratio was reduced from 20:1 to 10:1.

Staff Response:

The FEIR uses the correct definition of rare plants. Special status plants are those that have been officially designated and/or appear on various lists maintained by governmental agencies (e.g., USFWS, CDFG), statewide organizations (e.g., the California Native Plant Society, and/or local experts (e.g., Santa Barbara Botanic Garden). Independent of the official state and federal lists, the California Native Plant Society maintains an Inventory of Rare and Endangered plants (CNPS 2001) that is separated in to five lists. Plants that are on List 1A (Presumed Extinct in California), 1B (Plants R, T, or E, in California and Elsewhere), and 2 (Plants R, T, or E, in California, but more common elsewhere) meet the definitions of E, T, or Rare under state law, and must be considered under CEQA. According to CNPS, some of the plants on List 3 and "very few" of the plants on List 4 meet the definitions under state law, and therefore it is *recommended* that these species be evaluated during CEQA document preparation. The FEIR identifies potentially significant, but mitigable (Class II) impacts to eight species of "special

status” rare plants. Five of these are on either List 3 or 4; only three are on List 1A (Santa Barbara honeysuckle, *Lonicera subspicata* spp. *subspicata*, Coulter goldfields, *Lasthenia glabrata* ssp. *coulteri*, and Robinson peppergrass, *Lepidium virginicum* var. *robinsonii*).

The County’s practice under CEQA is to consider impacts to species on the following lists potentially significant: (1) those officially designated as Endangered, Threatened, or Rare under State and/or federal law (none occur on site); and (2) those meeting the definition of a rare plant as contained in CEQA Guidelines Section 15380. This section holds that species not included in official listings (#1 above) shall be considered to be Endangered, Threatened, or Rare *if the species can be shown to meet the criteria of subsection (b) of 15380 of CEQA*. As stated above, the California Native Plant Society (CNPS) has determined, and the County agrees, that, generally, any species on CNPS Lists 1 and 2 automatically meets the CEQA definition of a rare plant, and thus they must be fully considered in CEQA documents. This situation applies to the Santa Barbara honeysuckle, Coulter goldfields, and Robinson’s peppergrass, which are addressed in the EIR (Impact Bio-5) and Condition 22.

In addition, CEQA Guidelines Section 15380 provides that if anyone can demonstrate that *any* species meets the definition of E, T, or Rare, then that species can be considered to be endangered, threatened, or rare. In general, for species that are *not* on List 1 or 2, an expert needs to present evidence that the particular species meets the criteria, and warrants consideration as Rare, E, or T. This could be done in an EIR, and is sometimes done on a case-by-case basis, or in a public hearing. Unless a case is made otherwise, and substantial evidence is presented, the County generally considers impacts to these species to be adverse, and less than significant, and generally *recommends* mitigation. *To date, with the exception of lichen species, no evidence has been presented to the County indicating that additional plant species meet the CEQA 15380 criteria for being considered endangered, threatened, or rare.* This situation applies to the other five plant species, (only three of which are listed in the appellants letter), and the EIR *recommends* (EIR, page 4.4-46) that they be included in the mitigation. For lichens, (Impact Bio-6) the County has, in fact, been more conservative than required under CEQA and has accepted the DMEC 1998 Biology report for Bridle Ridge to be evidence that the lichen species on site meet the CEQA criteria, even though none of the lichen species occurring on site are officially listed, nor are they on CNPS List 1 or 2. Thus Condition 23 requires the Boulder Removal Plan.

The performance criteria for rare plant mitigation under Condition 22 require a 5:1 replacement after five years, whether or not the replacement starts with a 20:1 or 10:1 mitigation ratio. The County has no set criteria, and 10:1 is consistent with past County practice, and, based on project success ratios, is adequate to mitigate impacts to rare plants.

ISSUE 12: Resource Mitigation Plans. Appellants contend that resource mitigation plans should be subject to public review.

Staff Response:

Project conditions require preparation of at least twenty separate resource mitigation plans that would implement mitigation measures identified in the FEIR. These project conditions also set forth detailed plan requirements and timing which state the goals and standards that each plan must meet. In addition to plan requirements, project conditions state specific monitoring and reporting requirements that plans must incorporate. A list resource plans follows:

Condition #	Plan Requirement
3	<i>Environmental Quality Assurance Program (EQAP)</i>
9	<i>Lighting Plan</i>
13	<i>Construction Management Plan</i>
15	<i>Open Space Management Plan</i>
15	<i>Integrated Pest Management Plan</i>
15	<i>Pepper Tree Retention Plan</i>
18	<i>Native Grassland Restoration Plan</i>
19	<i>Coastal Sage Scrub Mitigation Plan</i>
20	<i>Wetland Mitigation Plan</i>
22	<i>Sensitive Plant Survey & Protection Plan</i>
23	<i>Boulder Removal Plan</i>
25	<i>Weed Management Plan</i>
29	<i>Woodland Protection Plan</i>
34	<i>Burrowing Owl Protection Plan</i>
36	<i>Mammal, Amphibian, and Reptile Species Survey & Construction Relocation Plan</i>
52	<i>Fire Emergency Response Plan (FERP)</i>
52	<i>Fire Protection Plan</i>
67	<i>Solid Waste Management Plan</i>
71	<i>Storm Water Pollution Prevention Plan (SWPPP)</i>
72	<i>Storm Water Quality Management Plan (SWQMP)</i>

Standard County practice in projects such as this one is to require staff review and approval of plans meeting condition requirements prior to tract map recordation or permit issuance, not prior to project approval. The project conditions, which have been the subject of intensive public scrutiny and discussion, set forth the requirements that the plans must meet. Additional review of plans by the public prior to project approval are not necessary (or in most cases feasible) where requirements have been clearly set forth by project condition. Where plans have been

prepared in advance, they are available for public review (e.g., the wetland mitigation plan was included in the Revision Letter).

ISSUE 13: Inadequate Range of Alternatives. (Appeal Letter, p. 7, CEQA Issues) Appellants contend that the FEIR does not evaluate an adequate range of alternatives because no alternatives in the EIR avoid the environmentally sensitive West Mesa (Terrace area) and because the project objectives were crafted by the applicant and are overly narrow.

Staff Response:

The FEIR evaluates an adequate range of alternatives based on a suitable statement of project objectives. CEQA requires that an EIR evaluate a reasonable range of alternatives to a project that would feasibly attain most of the basic project objectives and would also substantially lessen significant project impacts. The FEIR considered six project alternatives as potential options for reducing or eliminating potentially significant environmental impacts: (1) no project alternative; (2) reduced park alternative, (3) reduced density alternative, (4) project design alternative, (5) alternative housing mix, and (6) alternative sites. This range of alternatives varies the uses, location and density of development on the site. Fundamentally, an EIR need only consider feasible alternatives that attain most project objectives. As discussed in the FEIR, removal of single-family estate parcels from the upper Terrace would reduce the market value of these lots and affect financial feasibility. Based on the financial analysis presented to the Planning Commission, the size, location and orientation of these lots are central to the financial feasibility of the project as a whole. Marion Fong's analysis demonstrates that project alternatives that reduce density, such as Reduced Density Alternative #3, render the project financially infeasible. For the similar reasons, Marion Fong's analysis shows that the SWAP proposal is also not financially feasible.

Although the project applicant listed project objectives as part of the project proposal, County staff is responsible for the exact statement of project objectives contained in the FEIR. CEQA does not prohibit a project applicant from submitting a list of objectives to the lead agency for consideration and incorporation into the EIR. It does require that the statement of the objectives include the applicant's basic objectives for the proposal.

ISSUE 14: Infeasibility of Environmentally Superior Reduced Density Alternative 3. (Appeal Letter, pp. 6-7, CEQA Issues) Appellants contend that Alternative #3 should have been adopted because it is environmentally superior because substantial evidence supports its feasibility. Appellants object that no findings regarding Reduced Park Alternative #2 are made even though the EIR finds it would substantially lessen traffic and biological impacts.

Staff Response:

As discussed above, in weighing the information presented to it, the Planning Commission determined that Reduced Density Alternative #3 as well as the SWAP alternative is not financially or legally feasible. Although appellants made assertions and presented information to

the contrary, substantial evidence, including Marion Fong's analysis, support the finding of infeasibility. Reduced Park Alternative #2 was determined not to be environmentally superior to the proposed project because available mitigation measures would reduce traffic impacts of the proposed project below the threshold of significance.

ISSUE 15: Failure to Correctly Assess and/or Correctly Classify Impacts. (Appeal Letter, pp. 7-8, CEQA Issues) Appellants contend that multiple environmental impacts were incorrectly classified as Class II (significant but mitigable) and should be re-classified as Class I (significant and unavoidable) impacts.

Staff Response:

As discussed below with respect to impact areas of concern to appellants, the Planning Commission determined that the FEIR properly classifies impacts.

View Impacts. Using a visual resources analysis and visual simulation, the FEIR evaluated impacts to visual resources and concluded that impacts to views could be mitigated below the level of significance. Aesthetics and views impacts are mitigated by Conditions 4 (BAR Approval) 5 (Compatible, natural building materials and colors), 6 (understory and retaining wall colors, materials and screening) 7 (Lot 2 building height), 8 (Landscaping) and 9 (exterior night lighting). Visual impacts were properly classified as Class II (significant but mitigable).

Lichen Impacts. Condition 23 requires protection and relocation of boulders supporting sensitive lichens, where those boulders would be disturbed by development. Boulders that would not be affected by development, including all boulders located in the PCAs, would remain undisturbed in their present location. While it is not feasible to remove especially heavy boulders, this condition is adequate to protect this resource. Lichen impacts were properly classified as Class II (significant but mitigable).

Wetland in Polygon 22. The project would not result in impacts to the wetland identified in Polygon 22. In particular, septic systems on Lots 12-14 would be located a minimum of 100 feet from the wetland in Polygon 22 consistent with County requirements. EHS staff has testified that this setback is adequate to filter and treat septic effluent and protect wetlands. The Basin Plan standards and septic capacity are conservatively designed based on the Plumbing Code to assure adequate septic capacity and prevent septic failure. (Note: Appellants refer to the GLA Wetland Map (Exhibit 2A) in Volume IV of the Recirculation Document and suggest that development is closer than 100 feet. Although the wetlands shown on this figure are accurate, the project footprint is not. Updated plans dated July 20, 2005 are more accurate (see Attachment F which shows the area in question). These updated plans were used to calculate the distance between the leach field areas and wetland polygon 22.) Wetlands impacts to Polygon 22 were properly classified as Class III (insignificant).

Wetland Polygon 10. Loss of 0.4 acres wetland within Polygon 10 would be adequately mitigated by the creation of higher quality slope wetlands at a greater than 3:1 replacement ratio as required by Condition 20. Condition 20 mitigates this impact to an insignificant level. Wetlands impacts to Polygon 10 were properly classified as Class II (significant but mitigable).

Impacts to Sensitive and Rare Plant Species. Condition 22 requires the preparation of a Sensitive Plant Survey and Protection Plan by a qualified biologist involving the survey for sensitive plants prior to the approval of any land use permit for any residential lot and the replacement of impacted plants at a 10:1 initial ratio (with a final of 5:1 after five years) following detailed requirements. The FEIR and the County Planning Commission determined that this measure was adequate to mitigate impacts to rare and sensitive plants to insignificant levels. As discussed above, sensitive and rare plant species were defined consistent with CEQA and other State law. Impacts to sensitive and rare plants were properly classified.

Coastal Sage Habitat. Adequacy of mitigation of impacts to coastal sage habitat is discussed above under Issue 4. Impacts to Coastal Sage Habitat were properly classified as Class II (significant but mitigable).

Traffic: The FEIR correctly evaluates traffic impacts. Traffic impacts were properly classified as Class II (significant but mitigable).

Sight distance was evaluated to County standards in the traffic study dated January 26, 2004. Page 25 of the traffic study, prepared by ATE on January 26, 2004, provides detailed information on sight distance and the Cal Trans standard employed in data evaluation. The use of the Cal Trans standard is acceptable to the County provided it meets or exceeds the adopted Engineering Design Standard for sight distance. Cal Trans was offered the opportunity to comment on the traffic study content and on any potential impacts generated to Highway 154 and Highway 192.

With respect to gap analysis, the County standard is to use delay at stop-controlled intersections as a measure of level of service and queuing. Gap analysis is not a standard item included in a County-requested traffic study. Again, Cal Trans was offered the opportunity to comment on the traffic study content.

Standard practice in evaluating project impacts, based on criteria contained in the Cal Trans Highway Design Manual, is to use the posted speed rather than the design speed. Design speed and posted speed cannot be used interchangeably.

The traffic study prepared by ATE January 26, 2004, addresses roadway and intersection impacts on pages 19 through 34 based on County criteria adopted by the Board of Supervisors. No roadway impact was identified using this approved criteria at the Via Chaparral/Foothill intersection. The traffic study prepared by ATE January 26, 2004, also addresses cumulative roadway impacts on pages 27 through 34 based on County criteria adopted by the Board of

Supervisors. Mitigation measures for roadway impacts are identified on pages 36 through 38 of the traffic study and have been incorporated as project conditions.

Because the project is located in the County's planning jurisdiction and the County is responsible for processing and review of the project, County thresholds were used to evaluate the project. The City of Santa Barbara and Caltrans were notified and had opportunity to comment on any concerns they may have had which were triggered by their individual threshold criteria.

Public use of the DR trails currently exists on the project property and was considered to be included in the existing baseline traffic conditions. Similarly, hang gliders currently use the project property and were considered to be included in the existing baseline traffic conditions. Park traffic estimates and trip generation rates are a best estimate derived from a similar local park and provide an accurate estimate of traffic that will be generated by the park.

Cultural Resources. Cultural resources were adequately mapped and potential impacts adequately mitigated by the FEIR. A Phase 1 Cultural Resources report was prepared by Jeannette A. McKenna for County EIR consultant Envicom and an extended Phase 1 Cultural Resources report was prepared by David Stone, SAIC, for the project under contract with the applicant. The project avoids siting development in the vicinity of known cultural resources. As additional assurance that any impact to cultural resources will be mitigated in the event that cultural resources are encountered during excavation, the project is subject to a number of additional conditions. Condition 45 requires monitoring of grading activities by a qualified archaeologist. Condition 46 requires that work be stopped in the event that archaeological remains are encountered until significance of the find can be evaluated by a qualified archaeologist and a Phase II prepared, if necessary. Condition 47 places certain restrictions on artifacts which may be located within PCA easements. Impacts to Cultural Resources were properly classified as Class II (significant but mitigable).

The County does not have the legal ability to condition projects to require property owners to grant access to private property by descendant Native Americans for religious and spiritual purposes nor is such access necessary to ensure conformity of the project with applicable policy standards and legal requirements.

ISSUE 16: Statement of Overriding Considerations. (Appeal Letter, pp. 8-9, CEQA Issues)
Appellants assert that the statement of overriding considerations is not based on substantial evidence that the project benefits outweigh Class I impacts and improperly relies on mitigation measures and project elements that only partially offset impacts.

Staff Response:

The Planning Commission cited a number of project elements as overriding considerations to support its finding that project benefits outweigh impacts. These considerations, which are not

limited to mitigation measures, constitute substantial evidence supporting the Planning Commission's finding:

- a. Affordable housing: five multi-family units that would be affordable to families and individuals making up to 80% of the median household income on the South Coast. The affordable housing component of the project represents 25 percent of the project and goes beyond the minimum affordable housing requirement. The affordable housing component of the project is part of the project description proposed by the applicant.
- b. Provision for three parcels totaling 10.14 acres for dedication to the County for a public park and public trail easements across the PCAs of proposed Lots 1 & 2. As discussed in response to Issue 1, above, 76.9 percent of the project area, including the area dedicated for a public park, would be retained in open space, going well beyond the 30 percent open space requirement applicable to this project. The applicant has voluntarily proposed this park area as public open space, even though the PRD zoning requirements could be satisfied by provision of common open space.
- c. Creation of approximately 100 acres of Private Conservation Areas (PCAs) encumbered by restrictive easements to protect biological, cultural, and scenic resources on residential lots. Again, the project goes well beyond the minimum required open space requirement.
- d. Dedication and continued use of two parcels totaling over six acres (Lots 18 & 19) for hang and para-glider landing area. This component of the project description provides for a special recreational use and is not part of a required mitigation.
- e. Dedication of Lot 22 as private open space to be held in common ownership by "The Meadows" Homeowners Association for the management, maintenance and protection of the visual, biological, and cultural resources. The dedication of Lot 22 as open space is part of the project description and contributes to the open space onsite beyond the required minimum open space area.

ISSUE 17: Planning Commission Unlawful Delegation of Authority. (Appeal Letter, p. 11, Planning Commission Authority) Appellants contend that the Planning Commission "abdicated" its authority by deferring to the applicant in deciding to approve the project and which conditions to impose.

Staff Response: The administrative record of the Planning Commission's lengthy review of this project speaks for itself. Over the course of ten hearings, the Planning Commission heard countless hours of testimony from technical experts, the applicant, appellants and interested members of the public, reviewed many hundreds of pages of correspondence, staff analysis and environmental documents, and deliberated at length at public hearing. The final project as approved by the Planning Commission on July 27, 2005 is the product of input from numerous sources, all of which was carefully weighed and considered against applicable policy and ordinance requirements. The Board in its *de novo* review of the project on appeal has the ability to revisit the Planning Commission's action and cure any perceived impropriety.

D. Minor Revisions to Findings and Conditions

Staff makes the following recommendations of minor revisions to the findings and conditions of approval contained in the Planning Commission Action Letter in Attachment A:

1. Condition 1, Project Description

To make the project description in Condition 1 consistent with the project description in the FEIR (see FEIR, Vol. I, Sec. 1.2.1 at page 1-2), staff recommends the following revision to Condition 1 (page B-2, paragraph 5):

The remainder of the property, consisting of 200.00 acres, is proposed as a Designated Remainder pursuant to §66424.6 of the Government Code and is omitted from the Final Development Plan. The Designated Remainder is not a part of the land division, nor part of any related development proposals. The Designated Remainder is independently committed for transfer to The Trust for Public Land, a non-profit land organization dedicated to protecting and creating open space, under an existing Charitable Donation Agreement.

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Deleted: The applicant would merge any underlying interior lot lines within the Designated Remainder upon map recordation. The Designated Remainder parcel would be subject to conveyance to a nonprofit land conservation organization concurrent with recordation of the VTTM.¶

2. Condition 1, County Park

To emphasize the intended passive recreational nature of the County Park on Lots 17, 20 and 21 and the clarify that any park design must protect existing biological and other resources as identified in the FEIR, staff recommends the following clarifications to Condition 1, Project Description, (page B-7) relating to the County Park:

CONCEPTUAL PARK PLAN

The proposed park would consist of three lots, (17, 20, & 21) of 12.11 acres in aggregate located immediately south of "The Terrace" at the current terminus of Via Gaitero, adjacent to the southern boundary of "The Terrace," Lots 5, 13, & 14. The conceptual plan for the park used to prepare the environmental impact analysis in the proposed FEIR envisions a low intensity/passive use facility that could include one or more public parking areas, a public restroom building, family picnic area, playground area for children, and open space areas for spontaneous recreational activities. Additional parking for cars and horse trailers would be available on Via Gaitero. An unmanned information kiosk would be installed at the trailhead near Via Gaitero describing the location of the trails, access and use restrictions, and the biological importance of the area. While the park would not be designed for organized sporting events, a future amphitheater could be used for various low-intensity gatherings such as informational classes. A large portion of the park property would be suitable for planting with native grasses. Interpretive signage in the planting area could be installed to describe the importance of native grasslands. In keeping with the passive recreational use program for the park, the park shall protect and incorporate existing native grassland areas on the site into the park design. The park plan shall similarly protect all biological and other resources (such

Comment [Jbp1]: If we go for lower intensity we would change this part, but to match the staff report, I have'nt changed it yet.

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as the wetland in Polygon 22) identified by the FEIR. Development of the park is not part of the proposed project and would be the responsibility of the County after conveyance of the property subsequent to final map recordation.

3. Conditions 1, 79 and 90, Project Phasing, Vesting Tentative Map and Affordable Housing

Facilitation meetings continue as of the date of this staff report. The applicant has requested that phasing of construction be authorized and that revisions to project conditions be included in the Board's action to give the applicant the option of constructing the project in two phases.

Staff and County Counsel accordingly propose the following changes to Conditions 1 (page B-9), 79 (page B-40), and 90 (page B-42), which would allow for phasing of project construction in two phases, commencing with the Meadows portion of the project (Phase 1), followed by the Terrace portion (Phase 2). These changes affect at most the timing and not the substance of the project conditions. They are consistent with the project as approved by the Planning Commission and the mitigation measures recommended by the FEIR.

Condition 1 (page B-9):

Option for Phased Project Development

The applicant may construct the project in two phases, specifically: first, Phase I, consisting of development of the "Meadows" residential lots (market-rate Lots 6, 7, 8, 9, 10, 11, 15 and affordable units on Lot 16), and second, Phase II, consisting of development of the "Terrace" residential lots (market-rate Lots 1, 2, 3, 4, 5, 12, 13, & 14), which would occur following Phase I.

The intent of this option to allow construction of the project in two phases is to allow the applicant to proceed with development of the "Meadows" lots following map recordation and compliance with those conditions of approval relating to development within the "Meadows" area. Under this project phasing option, development of the "Meadows" would occur in advance of development within the "Terrace" and compliance with conditions of approval relating to development within the "Terrace" area. If the applicant pursues phasing, County Planning & Development Department (P&D) will apply the conditions of approval contained herein to allow this project phasing while ensuring that all requirements have been completed as necessary for each phase.

In the event that the applicant develops the project in these two phases, then the number affordable housing units required to be provided with Phase I (development of the "Meadows") shall not be less than two affordable units, to be located on Lot 16, consistent with the approved Final Development Plan. The balance of the affordable units (3 additional units for a total of 5 affordable units for the project) shall be provided with Phase II (development of the "Terrace").

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79. If the subdivision is to be recorded by multiple final maps, additional conditions on the tentative map may be imposed by the Planning Commission pursuant to Government Code §66456.1.
90. Construction of the affordable units shall occur prior to, or concurrent with, the construction of the market rate units. Final inspection for no more than one (1) market rate unit shall be allowed prior to final inspection for all the affordable units. If the project is developed in two phases (Phase I: the "Meadows" market-rate units, followed at a later date by Phase II: the "Terrace" market rate units) then the number affordable housing units required to be provided with Phase I shall not be less than two affordable units, to be located on Lot 16, consistent with the approved Final Development Plan. In this case, final inspection for no more than one (1) market-rate unit in the "Meadows" shall be allowed prior to final inspection of the two affordable units. The balance of the affordable units (3 additional units on Lot 16 for a total of 5 affordable units for the project) shall be provided with Phase II, and final inspection for no more than one (1) market-rate unit in the "Terrace" shall be allowed prior to final inspection of all five affordable units. **Plan Requirements & Timing:** Prior to map recordation, this requirement shall be included in the *Agreement to Provide Affordable Housing* and shall be printed on all grading and building plans.

Monitoring: Permit Compliance staff shall ensure compliance during construction.

Mandates and Service Levels:

Section 35-327.3.1 of Article III (the Inland Zoning Ordinance) of Chapter 35 of the County Code provides that the decisions of the Planning Commission may be appealed to the Board of Supervisors.

Pursuant to Government Code Sections 65355 and 65090, a notice shall be published in at least one newspaper of general circulation, at least 10 calendar days prior to the hearing.

Pursuant to Government Code Section 65091, required mailed notice required to owners of the affected property, property owners within 300 feet of the project property boundaries, the project applicant and local agencies expected to provide essential services, shall be done at least 10 calendar days prior to the hearing.

Fiscal and Facilities Impacts:

Costs to process this appeal are partially offset by the \$435.00 appeal fee paid by the appellant. Costs beyond that fee are absorbed by Planning and Development. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-294 of the adopted 05/06 fiscal year budget.

Special Instructions: Clerk of the Board shall forward a copy of the Minute Order to Planning and Development Hearing Support Section, Attention Cintia Mendoza.

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Comment [Jbp3]: Should we loosen this so that the workforce housing could be constructed sometime later but before final build out? One problem is that because the developer is not building out the market units, it could be hard to track and could mean no units for 10 or so years.
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Comment [Jbp4]: I'm uncomfortable with this and we need to talk it over with MAPS. It affects our SOC and I believe it may affect the 65589.5 protections if Phase II never gets built. It might work if 3 units are built in phase I.
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Concurrence: County Counsel (facilitation)

Attachments:

- A. Planning Commission Action Letter, dated August 1, 2005
- B. SMFC and SWAP Appeal Letter, prepared by EDC, dated August 8, 2005²
- C. Letter from Laurel Fisher Perez, Suzanne Elledge Planning & Permitting Services, dated September 13, 2005
- D. Table 1: Grasslands Present on the Preserve at San Marcos
Table 2: Summary of Native Grassland Impact Estimates
- E. Project Plans³
- F. County Counsel Memorandum dated September 27, 2005 re: Government Code §65589.5 and Restriction Imposed on Local Agency Discretion
- G. County Counsel Memorandum dated September 27, 2005 re: Government Code §65589.5 Revised to Remove Subsection (d)(6) as Grounds for Denial or Imposition of Conditions
- H. Staff Memorandum dated July 21, 2005
- I. Staff Report dated September 3, 2005
- J. Staff Report dated July 20, 2005
- K. Staff Report dated June 17, 2005
- L. Staff Memorandum dated December 3, 2004
- M. Staff Memorandum dated October 15, 2004
- N. Staff Memorandum dated September 24, 2004
- O. Public Comment Letters

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² Copies of attachments to Appeal Letter, which are voluminous, have been provided to the Board separately and are not attached to this Board letter. Copies of Appeal Letter attachments are on file and available for review at the County Planning and Development Department.

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³ Complete architectural plans prepared by ON Design, dated March 4, 2005, which are voluminous, have been provided to the Board separately and are not attached to this Board letter. These architectural plans are on file and available for review at the County Planning and Development Department and will be presented at the Board hearing.

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