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July 19, 2012

Eric Peterson — Via E-mail
Fire Marshall
Santa Barbara County Fire
4410 Cathedral Oaks Rd.
Santa Barbara, CA 93110

Planning and Development — Via E-mail
Attn: Glenn Russell, Anne Almy and Alex Tuttle

Re: Park Hill v.2 Project

Eric:

The Park Hill Estates v.2 project was left in limbo with a 2-2 vote at the Board of Supervisors as to whether to have further environmental review on emergency egress.[1] It was the last and only project issue from the discussion of the Supervisors on May 1, 2012.[2]

An idea surfaced a few hours before the hearing that did not have time to be flushed out to create a win-win solution, and we believe there is a win-win solution on this as the only issue remaining on the project was fire safety and egress.

The Fire Department has already approved the design of the project and its location in the neighborhood. Its two points of egress exceed minimum Fire Department standards and add to local street connectivity to enhance fire safety.

The one point of public input was that lower San Antonio Creek Road where it connects with Tuckers Grove should be better so that people can rely on it as an extra emergency egress in a fire.

Right before the hearing, we were told that Public Works believes it can be improved at a cost of $120,000 max. It is not to be made a full functioning every day road with two-way traffic like it was when the County decided to make it emergency only in 1974.

[1] The case determining that a 2-2 vote at the Supervisors leaves the project in limbo as it does not re-institute the action of the Planning Commission but it gives the applicant a right to a claim against the County for damages for its failure to process the project to completion for approval or denial is see Sunset Drive Corp. v. City of Redlands (1999) 73 Cal App. 4th 215, 221 and 225, Vedanta Society of So. California v. California Quartet Ltd. (2000) .84 Cal. App. 4th 517, 535.

[2] The Process issue of- the implications of the County code identifying appeals to the Board as De Novo, and staff treating it as it was not De Novo was the one process issue.

With dimensions improved to about of 16-19 feet, it will rival some narrow roads that exist already as full two-way traffic roads such as in the Mission Canyon area and the backside of the Riviera. The Fire representative said to the Supervisors the standard for a two way road is 24 ft. and they did not have a specific standard for an emergency road only. The fact is that many roads that are critical to traffic circulation in times of emergency are less than 24 ft. wide. Those are all considered in a sense "legal nonconforming" conditions.

The County previously committed to residents in the San Antonio Creek area that they would maintain this stretch of San Antonio Creek Road as an emergency access road. No action is required to accept or not accept this existing condition into the emergency road network. If indeed the County dedicated its resources to making the road 24 ft. wide there would likely be a predictable battle within the neighborhood, some wanting to make it a full time full use road again like it was before 1974 and those closest to that road wanting its use to be as limited as possible. We saw this same dynamic play out in the Tree Farm project. Widening the road to that extent is not on the GTIP schedule so it has not been considered a priority to the County nor can this project's road fees be used for that purpose, Roads told the Board of Supervisors. It has indeed been used in times of emergency so an improved road can only likely to increase utility and safety.

Both Fire and Roads have said there is no nexus to impose the fix of this road on this project alone, as there are 3 churches and over 400 homes in the area that could use this also. The master EIR that covers the current Goleta Community Plan including this development which is consistent with the Goleta Community Plan analyzed the very road grid that exists right now and adopted this zoning and certified the master EIR that covers this project with overriding considerations as to fire safety issues (and biological issues) for all of the development in that area including development of this property. Three houses of worship have been permitted in the area, only one has had any requirements to upgrade the lower stretch of San Antonio Creek Road and that one, B'nai Brith was evidently excused from having to complete the work called for in the condition. Suffice it to say this road condition has nothing to do with approvals for Park Hill Estate v.2, and delays to date caused directly from that issue are unwarranted.[3]

As a voluntary contribution, we offer to improve the road at our cost with stipulations that the amount contributed from the developer will diminish from delays in processing by the County or neighbors in appeals. This modest change from the 2007 approval has been in process for over two years now; delays to date have been unreasonable.

We have had preliminary discussions with some in the Fire Department and they are quite favorable to the idea of improving emergency egress at a private cost.

The fire season is upon us and time is of the essence to get this road improved. It will not be improved without these voluntary private funds.

[3] The State of California Community Housing Department called me to find out about the status of local projects with affordable housing and we discussed the County's thwarting of this specific low density bonus density project engendered by specific NIMBY opposition to this project with 1.1 units per acre including, and affordable housing deemed offensive to some neighbors. We discussed the implications on the County failure to meet state rules and requirements. This will be addressed separately.

One other issue, to address an acute concern of some neighbors, we also propose that the affordable rental home be required after 10 market rate lots are developed (not 8). This permits more time for the County's in-lieu fee revisions to be completed, which could obviate the need to build the affordable unit. Also, we would agree to have that unit, if built, be subject to a BAR design charrette, following an applicant proposed design, thus providing assurance that the process will produce an appropriate quality home for that neighborhood.

The existing 12 lot approval can be implemented now without this extra benefit and there are only 3 extra market units above that in this current plan.

Please see the proposed specifics attached. We welcome input from any party on this idea.

Thank you.

Sincerely,

Jeffrey C. Nelson

Cc: Office of CEO, Attn: Renee Bahl
Supervisors

CONDITIONAL AGREEMENT TO VOLUNTARILY UNDERTAKE PUBLIC IMPROVEMENTS
Re: Park Hill Estates v.2
10TRM-00000-00001
From: the Oak Creek Company

ISSUES, PROPOSED IMPROVEMNTS:

There is a stretch of San Antonio Creek Road south of the fire hydrant located near the northeasterly end that is not as wide as the lower stretch that is bounded by retaining walls in which the road width is approximately 20 feet wide.
This road connects with Tuckers Grove Park. This operated as a full use two way traffic road until the County took action in 1974 to convert it to emergency access only.

For this approximate 300 foot stretch, there is an opportunity to make the road wider by having the upslope side widened by moving the northerly edge of the road towards the slope above it, through a combination of retaining walls and boulder walls that are stacked or laid in to the slope.

The project agrees to widen the road to between 16 to 18 feet, as measured from edge of pavement, as much as is possible with the topography and pre-existing utilities.

Additionally, this work shall not require retaining walls higher than 3 ft. 6 in. nor special efforts to deal with any underground utilities. There are parts of the road where the width is already 20' to 23' and parts of the road where the existing width is closer to 14". This proposal deals with widening the road on the narrower parts.

This offer is based on the assumption that the improvement area is in the County Road right-of-way, so that the only permit necessary would be an Encroachment Permit issued by the County. Also included in the Encroachment Permit and work would be trimming or removing vegetation that conflicts with this widening goal, including Pepper tree(s). No widening on the southern or down slope side shall be required.

AMOUNT OF THE COMMITMENT:

All of the above shall be subject to a not to exceed cost of $120,000 (Public Works estimate), as a private (not a Public Works) project.

TIMING AND CONDITION OF OFFER:

This offer is conditional on approval of the Park Hill Estates v. 2 project tentative map for 15 market rate homes and one affordable home on the property known as 4700 Via Los Santos, Santa Barbara, CA 93111, APN 059-290-041, 10TRM-00000-00001. This offer shall run with the permits for such project approval. This assumes the conditions of approval do not include any increase in obligations beyond those in the staff report to the Planning Commission in the prior hearing of May 22, 2012.

The amount of the offer is conditioned on the timing of the project receiving Final Approval from the County of Santa Barbara, including any appeals or any litigation that is brought by outside parties to delay or challenge approvals ("Final Approvals"). The amount of the offer is $120,000 up until Final Approval if issued for the project by **September 12, 2012**. Thereafter, the amount offered shall be reduced by $20,000 per month prorated until November 1, 2012 at which time the offer will be withdrawn if the project does not have Final Approvals.

Timing of the work shall be during the site work done at the outset of the project development of infrastructure for the Park Hill Estates project.

Jeff Nelson

_____ July 19. 2012

Jeffrey C. Nelson Date
The Oak Creek Company
Applicant, Park Hill estates v.2

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April 25, 2012

Chair Farr and Supervisors
Santa Barbara County
Board of Supervisors
123 E. Anapamu St.
Santa Barbara, CA 93101

Via E mail

Re: Park Hill Estates v.2
Hearing Date- May 1, 2012

Chair Farr and Supervisors,

This Supplements our appeal letter of February 6, 2012 with an update of changes and efforts on our behalf since then.

Background
This project has been in process in various iterations since 1997. The same owners have owned it since the early 1970's but the Goleta Water Moratorium prevented them from applying to the County until the moratorium ended in 1997, at which time they did apply.

The property has 14.87 acres. The County approved a 12 lot version in 2007 and the mitigated ND became final and uncontested. Per legal precedence that action, including the status of the MND as unchallenged, is a predicate for considering further project changes.

The property did not sell with the 12 lot approval, as conditioned, and the housing market crashed, thus prompting the owners to enter into an agreement with us; re-permitting was mandated by the economy and by the fact that the County affordable housing rules had an affordable housing in-lieu fee escalate from $95,000 in 1997 to $1.1 million in 2012.

We reviewed every action and hearing in 2007 and crafted a project that dealt with the affordable housing requirement with a permitted onsite very low income rental unit on its own lot and a bonus density. The project was 17 market units and 1 affordable. There was considerable neighborhood concern about the affordable and density so we crafted a compromise plan, altering all lots and reducing the project to 15 market units and 1 affordable.

We worked diligently through the County process and satisfied all of the Fire Department and P & D requirements so the project was recommended for approval before the Planning Commission.

In response to substantial neighborhood concern, the Planning Commission avoided taking action on the project itself, instead calling for a focused EIR on area wide fire safety and biology.[1]

The County had amply and specifically addressed these issues in the mitigated ND and the staff confirmed at the Planning Commission hearing that there was no new or substantial evidence to overturn or justify disregard of their conclusions.

We appealed and the matter is to be considered de novo and the "hearings on the appeal shall be De Novo" (County Code 35.102.050C). That means the Supervisors could take any action the Planning Commission could have taken at that hearing.

Our preferred action is that the Supervisors approve the MND and project .[2]

Changes and Actions since the PC hearing
Since the hearing we have done the following:

- **County Mediation.** Requested that the County do a land use mediation on the appeal, as had been requested by the President of the San Antonio Creek Homeowners Association, Danny Vickers. The County denied that request.
- **Private Mediation.** We proposed a private mediation with a land use planner known to neighbors and who is working on a project for an adjacent property. They did not respond to that request.
- **Meeting and Agreement to project concessions with neighbor association representatives.** We met with Danny Vickers on April 18 and asked him what would be ideal project changes to get neighborhood support. The "agreement" on this is attached. It essentially
    - Eliminated 1 more market unit so that it is 14 market units on 14.8 acres, and
    - Sets up a methodology for eliminating the affordable unit in time via payment of an in-lieu fee, if the County makes reasonable changes to the in-lieu fee before the affordable is built. The County has been

[1] In the Tree Farm housing project, a full EIR was done, taking two years, for a 135 unit project but the EIR's contents were not material to PC deliberations on road connection issues, where subjective neighbor input spoke louder to the decision makers than the EIR discussion.

[2] Definition of DE NOVO: "A new; afresh; a second time. A venire de novo is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial" (Black's Law Dictionary, 2ND ED.) Endless delays and inaction by the PC is effective denial for the time that exceeds a reasonable consideration time. This project was first slated for PC hearing in **November 2010**, and then delayed until **September 2011**, and here it is April **2012** and the County has still just delayed the project, not approved or denied it. It must make finding if it denies it, and it does not have the confidence that it can make such finding so it has appeased neighbors by just delaying taking action on it.

reviewing in-lieu fees and will be making changes in the foreseeable future.

- Modify the lot and building height on lot 10 to meet the concern of a neighbor to the west (Sheldon).
- Finally, Mr. Vickers asked that we contribute to some greater solution as to the road connection of San Antonio Creek Road and Tuckers Grove, which the County elected to close as an active road in the early 1970's after the current Park hill owners bought the property. We suggested that the project road fees of some $203,000 be first dedicated to improving this as a one-way emergency egress if deemed appropriate by the County.

This issue of the Tuckers Grove road was specifically declared by the Planning Commission in 2007 to be an area wide issue meriting further attention, "but there is no nexus between that issue and this project". We have not heard back from Mr. Vickers and others as of yet. Indeed to this date, neighbors at large have not been advised by the neighbor communication clearinghouse on these latest project concessions since the PC hearing There is no linear dynamic in dealing with neighbors as demonstrated in our earlier compromise proposal of reducing two units which was met with 6 weeks of silence and then just another community meeting initiated by the neighbors focused on "can you get rid of the affordable unit".

- **Input on In-lieu Fees revisions.** Provided the County with input on its in-lieu fee revisions which are in process, including following up on Mr. Hunt's suggestion of required second units in low density areas such as this (see attached email and letter).
- **Communications with the State.** I communicated with the State Department of Housing and Community Development representative who oversees compliance with Santa Barbara County's housing requirements. I reminded him that I had written to the State repeatedly saying that the County's action on real projects that included affordable housing is more material than their promises, and that I would update him further as needed and challenge the County's compliance with its State housing requirements based on the further County actions on these projects. I discussed how this had to be one of the lowest density projects in the State providing affordable housing at only about 1 unit per acre.
- **Bonus Density Law expert contact.** I consulted with the lawyer/ author of a recent legal article entitled "the density bonus law: has its time finally arrived?" concerning enforcement of this State La**w** requirement and actions that can be taken when agencies try to avoid complying with the law.

Fire Department Follow-up. I spoke with Dwight Pepin of the Fire Department concerning the fire issue. He confirmed that the project met all of the County Fire Department requirements, actually exceeding them by providing two routes of exit for only 16 homes when their threshold for that is 30 homes. He also said that our project fully complied with their standards for

2 exits from the area independent of the San Antonio Creek, Tuckers Road connection. He said that the project and setting were superior in emergency road access to other properties in their jurisdiction including the Mission Canyon area. He confirmed that the Tuckers Grove exit was not required for the Fire Department for this project.

At different times, different Fire Department representatives had said different things as to whether they view Tuckers Grove as functional and usable in an emergency or not. In any case it is an area wide issue not related to the extra three homes from the project over the 2007 approved project. Based on this, it seems that all it takes is for the MND to be changed to reflect that different Fire Dept officials have provided different input on the utility of the Tuckers Grove exit over time, but that that Fire Department has declared this project meets all of the Fire Department standards for exits and regional egress and indeed exceeds the project specific requirement for number of road exists from the property.

Conclusion

This property is pure infill property that has been subject to County process for much of the time since 1997. The affordable housing issue went from quite manageable with a $95,000 in-lieu fee to unmanageable with a 30% inclusionary requirement and vast in-lieu fees as an alternative. If the in-lieu fees had escalated over time at the same rate as Santa Barbara housing median sales prices, the fee would now be $200,000. The in-lieu fee for this property went from $786,000 in 2007 when housing was robust to $1.1 million after a significant market crash. No rational person could justify that. Moreover, during that time frame a case became final questioning the legality of that requirement at all (see original appeal letter). We spoke with an expert on this subject that said in other jurisdictions Statewide you would expect this sort of in-lieu fee on a 350 unit project, not a 14-15 unit project. The County says through its policies that they want the affordable unit. If so, they should just approve the project with that unit. If their priority is that we appease all neighbor voices, they should adopt the alternative offered to the neighbors, which is to delay building the affordable unit.

This project offers a huge public benefit by contributing a 6 acre native grass preserve at the UCSB West Campus Bluffs rather than 2 acres of restored grasslands in the backyards of lots and in the detention basin, the solution in 2007.

We have amply covered in our appeal letter that no EIR is justified for either area wide emergency traffic circulation or biology.

If that is required by the County, more rational alternatives for us are:

1. Seeking damages against the County for having elected to abandon the San Antonio Creek Road connection, thus putting that issue into question such that it has damaged the project[3], and
2. Offering grasslands to UCSB to transplant then disking the property to enhance its fire safety and re-applying with a baseline of a clean biological slate.

The owners have waited much too long, 40 years now, because of governmental restrictions, the last 15 with the County. The experienced and high quality project team has met every single P&D requirement with a high quality addition to the area.[4] At some point, the County has to stand up for good, professional, well intentioned planning by locals that meets all of P&D's and all departments' requirements or they deserve the negative impact on the County resources that may well be the impact of such institutional failure.

Very Truly Yours,

Jeffrey C. Nelson

Cc: Dr. Glenn Russell, P& D
Alex Tuttle, P & D
Dwight Pepin, Fire Department
County CEO's office

[3] Every day the project has been delayed to this point because of concern about the County limiting access through San Antonio Creek- Tuckers Grove, is a day that it has impaired this project by the County's own actions. Our appeal letter makes reference to the case against Half Moon Bay where that jurisdiction was bankrupted by a judgment in which the "planning problem" the project faced was indeed created by the jurisdiction itself. Indeed the grasslands have also flourished there from required annual mowing to meet Fire Department requirements and because unreasonable affordable requirements have stymied development to date. Endless delays and inaction by the PC is effective denial for the time that exceeds a reasonable consideration time. This project was first slated for PC hearing in **November 2010**, and then delayed until **September 2011**, and here it is April **2012** and the County has still just delayed the project, not approved or denied it. It must make finding if it denies it, and it does not have the confidence that it can make such finding so it has appeased neighbors by just delaying taking action on it.

[4] Ironically, the Oak Creek Company's last project, *Vintage Ranch* was publically criticized upon completion, by P&D representatives then, as being too exclusive. This project will be even more exclusive, yet neighbors fear it will not be exclusive enough. Vintage Ranch like other projects of that era exist because of successful litigation against the County

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September 2, 2011

Santa Barbara County
Planning Commission
123 E. Anapamu St.
Santa Barbara, CA 93101

Re: September 7 hearing agenda item 1-
Inclusionary Housing Status Report

Dear Chairman Valencia and Commissioners,

While staff will give you an update on the inclusionary housing program from the Staff's perspective, here is one from the trenches of someone trying to get new local housing approved.

I have represented many local projects over the last 25 years including many of the projects that provided some affordable housing.

Before the housing market collapsed, the inclusionary component seemed to be a necessary evil where you hoped the market rate units would subsidize that obligation.

The reality is that the forced inclusionary requirement is even worse than a "something for nothing" scheme. This inclusionary obligation serves as an active detriment to getting neighborhood buy-in to a project and creating a financially viable project. An example of this ironically is a project we are working on now that was supposed to be before your Commission today, Sept. 7, but is not because of endless dialog we are having with concerned neighbors (Park Hill Estates v.2).

This project on 14.95 acres started processing in 1997 at the end of the water moratorium. The owners were thwarted from 1972 by that. In-lieu fees for affordable were $97,000 in 1997. Various iterations have been proposed over time including one in 2007 for 12 homes with an in-lieu fee at that time of $784,000. Even though market values have dropped substantially since 2007, the in-lieu fee for this same project, if the map recorded now, is now calculated at $1.1 million for 12 homes and $1.3 million for 14 homes.

Alternatively, the inclusionary requirement for the property is building 6 affordable units in this area where property values are near and above $2 million per house. Both of those options are frankly absurd. The remaining option is the state bonus density program, with one very low income rental and extra compensating market units.

The neighbors know nothing of inclusionary requirements when they gather emotional momentum, convinced that a new project like this being proposed is inconsistent with their neighborhood.

We have done extremely high quality projects before, but that does not overcome the neighbor belief that what is being proposed is a "Brazilian shanty town" not just the affordable unit, the whole project.

The County has told the California State Housing Agency that it is advancing affordable housing through its various programs. The truth is that it stands back and does nothing to defend or even process in a timely fashion actual projects that meet its affordable requirements. Staff merely stays free from the fray, delays action as long as possible while the dynamic between developer and neighbors takes place, then sticks its hand out at the end of the process and says "give me subsidized units or a million dollars for failing to build affordable units".

In 2004, the County substantially increased its inclusionary requirement from one where projects had to provide one of a range of affordable components to providing all 4 levels of affordable housing. The premise was that the marketplace would never provide these opportunities.

A point of reference as to the affordable percentage required is for that of redevelopment agencies. The extremely high County 30% affordable requirement (20% north county) contrasts markedly with those agencies, whose very existence is related to that objective; redevelopment agencies are required to build 15% of the units at affordable rates, and this does not apply to each project, but to the whole area.

In fact the market correction and very low interest rates have made housing affordability a reality. Moreover, new rentals and a lessened consumer imperative that "everyone must own a home" have created much more affordability than the County's policies ever would have.

People will not buy re-sale controlled homes at the bottom of the market when they have other opportunities that would give them the real upside if the market improves. Yet the County is charging about $560,000 for each workforce or moderate unit that the County requires that a project does build and give away at a subsidized price. That is laughably unreal in the context of good faith private enterprise efforts to create new housing opportunities in an extremely challenging market.

Inclusionary housing requirements, those that are all *stick* and no *carrot*, may be soon a thing of the past. A case came out determining that an inclusionary fee was unlawful as new housing opportunities are not what cause the need for affordable housing; the fee is unrelated to the impact of the project on that public objective.. (BIA v. City of Patterson (2009) 171 Cal. App. 4th 886, See also California Mitigation Fee Act Gov. Code 66000 et seq.

Also a recent case from Santa Monica states that any challenge to an affordable requirement has to come on a project by project basis, not at the outset when a policy is adopted.

Looking beyond this jurisdiction, what is happening elsewhere in the housing world? First there is a resurgence of rental housing being proposed, funded and developed at high enough densities to justify it. This is a fundamental change in the housing world as *for- sale* housing attracted all the capital for a long period; that is reversing. Secondly, jurisdictions like the City of Santa Barbara are looking at much higher densities to create workforce priced housing, assuming it is density and unit size that lead to these affordable attributes, not inclusionary requirements.

The County has neither a factual or legal basis for imposing these inclusionary requirements on projects. While the County did a justification study before, it does not come close to withstanding scrutiny (2010 Housing Element Input)

At a recent California State Bar Real Estate Section conference on "Affordable Housing programs after the crash: What Next?" the consensus was that any inclusionary requirements were being worked out, project by project, on an ad hoc basis as public agencies are avoiding the definitive legal showdown that could end inclusionary housing statewide.

The inclusionary housing policy puts developers in a no-win situation politically and economically. You must understand this as you assess the future of this program and as you see actual housing projects emerge from its challenges to finally get to the Planning Commission.

Very truly yours,

Jeffrey C. Nelson

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Mr. Alex Tuttle
Santa Barbara County Planning & Development
105 E. Anapamu Street
Santa Barbara, CA 93101

January 23, 2012

Re: Park Hill Estates Project – Response to David Magney's Comments

This letter provides a response to comments made by David Magney in his December 1, 2011 Park Hill Estates Proposed Final MND v.2 (10TRM-00000-000001) letter. I am responding specifically to Mr. Magney's comments on the vegetation surveys and reports that we (Mark de la Garza and Melodee Hickman) at Watershed Environmental prepared for this project.

First let me begin by saying that Watershed Environmental (Mark de la Garza and Melodee Hicman) have a long history of working on this property. Our first survey of this property was in March of 1998. The results of that survey were presented in a report titled *Botanical Inventory/Native Grassland Survey, 4700 Via Los Santos Road, Santa Barbara California*. We prepared an addendum to the 1999 report in October of 2002 the purpose of the addendum was to correct a mistake we made when we included native grasslands that existed on an adjacent parcel in our 1999 report. Our work in 2002 did not involve a site visit. The next time we did any field surveys on the property was in September of 2005 when we reassessed the native grassland on the property. We performed a two-hour survey of the property and prepared a letter report that concluded that the grasslands were essentially the same as they were in 1999. The next surveys we performed were conducted in August of 2010, the results of which were presented in a report dated October 25, 2010 titled *Vegetation Survey Park Hill Estates*. In summary, we performed vegetation surveys of this property in the spring of 1998, fall of 2005, and summer of 2010.

Mr. Magney's comments question our survey methods and results and attempt to cast doubt on the accuracy of the work we performed, because of a few misspelled Latin plant names and omission of a few sub-species and variety names. Some of these are simply typographical errors, others involving the omission of variety and subspecies names for Ambrosia psilostachya, Baccharis pilularis, Dichelostemma capitatum, and Eucalyptus globules occurred because we followed the nomenclature in the Santa Barbara Botanic Garden publication *A Flora of the Santa Barbara Region, California* (Smith 1998). These errors and omissions had no impact on the report conclusions because there are no rare, threatened or endangered plant species on the property. The county biologist (Melissa Mooney) reviewed these reports and she understands that the science of botany is evolving in response to new genetic and taxonomic research. Mr. Magney in his 12/1/11 letter fails to point out that the scientific names for the following plants: *Hemizonia fasciculata Gnaphalium californicum*, and *Gnaphalium canescens* ssp. *microcephalum* have all recently been changed from the names published in the 1993 *Jepson Manual of Higher Plants* and the 1998 *A Flora of the Santa Barbara Region, California*. In order to avoid confusion, I choose not to change the scientific names of plants whose names have changed since we did our original work in 1998. During the preparation of the October 25, 2010 report, I noticed that I had duplicated two plants in the table of vegetation observed, because I had used the newer scientific plant name and I had also retained the older name. I corrected this error by deleting the duplicates from the table (keeping the names used in the previous reports) but I failed to correct the species counts on Page 6 of my report. I apologize for any confusion this may have caused. The correct number of vascular plant species observed

on the property is 87, 51 of which are introduced species and 36 are native. This counting error in no way effects the report conclusions.

Lastly, I would like to respond Mr. Magney's assertion that he found 59 different species of non-vascular plants during his 1997-98 botanical surveys of the Bridal Ridge project site and that non-vascular plant surveys need to be performed on the Park Hill Estates property. The Bridal Ridge project is the property that is now known as the Preserve at San Marcos. The County biologist (Melissa Mooney) and planning commission members Michael Cooney, Joe Valencia, and Daniel Blough may recall that Mr. Magney made similar claims during the environmental review of the Preserve at San Marcos project. In response to Mr. Mangey's claims, the County of Santa Barbara conditioned (Condition No. 23) the Preserve at San Marcos project to hire a qualified lichenologist to survey the boulders on the 177 acre Preserve at San Marcos property and determine if any sensitive lichen species were present, and to prepare a boulder removal and relocation plan if any rare or sensitive lichen species were found. Watershed Environmental was the applicant's biologist for the Preserve at San Marcos Project, in 2006 we retained the services of Mr. Kerry Knudsen, Lichen Curator, for the Herbarium, Department of Botany & Plant Sciences, at the University of California, Riverside. Mr. Knudsen performed a survey of the Preserve at San Marcos development areas and found 37 lichen species, none of which were considered endangered, rare, or threatened. Mr. Knudsen went on to state that he "observed none of the lichens that David Magney listed as occurring or expected on the 377 acre property. Indeed, according to the current scientific literature, many of the lichens Mr. Magney cited, such as *Acarospora extenuata* and *Dirineria picta,* are not even considered to occur in California. Other lichens he mentioned are well known not to occur outside of a narrow belt along the immediate shoreline and thus would be unexpected in the Preserve at San Marcos Project area". I (Mark de la Garza) have enclosed a copy of Mr. Knudsen's March 1, 2006 Preserve at San Marcos Lichen Survey report, for the County staff and planning commission to consider, as they decide how much credence to give Mr. Magney's assertions during the Park Hill Estates environmental review process.

As a consulting biologist with over 25 years of experience working in Santa Barbara County, I strive to be as accurate as possible given the time and budgetary constraints that I have to work with. Prior to performing the botanical surveys for the Park Hill Estates project, I spoke with the County biologist (Melissa Mooney) to ensure that the work we performed would provide the County with the information they needed to perform their environmental review as required by the California Environmental Quality Act. It is my understanding, that we (Watershed Environmental) performed the Park Hill Estates botanical survey work to the satisfaction of the County Planning and Development Department. The few errors that we made in our 2010 report were minor in nature and in no way affect the report results, conclusions, or the County's environmental review process. If you have any questions regarding the contents of this letter please give me a call at (805) 729-1070.

Sincerely,

Mark de la Garza
President/Watershed Environmental

cc: Melissa Money
Jeff Nelson

Attachments: 3/1/06 Lichen Survey of Preserve at San Marcos Project

Park Hill Estates v.2

December 17, 2010

Exhibit
1.

NELSON LAW FIRM
735 STATE STREET
SUITE 212
SANTA BARBARA, CALIFORNIA 93101

JEFFREY C. NELSON

Phone (805) 845-7710
Jeff@jeffnelsonlaw.com

October 26, 2010

Alex Tuttle
Planning and Development Via Email
123 E Anapamu St
Santa Barbara Ca.

Re: Park Hill Estates v.2

Dear Alex:

Watershed Environmental has completed a recent re-study of the site for native grasslands. Not surprisingly, the delay in the development of the property has resulted in increased areas of Purple Needle Grass. I wanted to pass on the following observations related to this change.

There is no guarantee that this resource would be there forever, independent of the development, in at least two respects. First, the report states that chaparral is growing in the area on the west which tends to out-compete the Purple Needle Grass and could likely eliminate it altogether in areas where chaparral grows. Second, this is not a protected plant that could not be removed by the owner, independent of any permits. Some plants are rare and endangered and cannot be subject to a take without a permit. That is not the case here and the owners could disc the site for fire control or otherwise remove plants such that none of the disparate separated sites with purple needle grass is more than ¼ acre, in which case there would be no mitigation.

We are invoking the bonus density incentive to override the County policy on Purple Needle Grass mitigation.

From an environmental standpoint, CEQA has a provision calling for removal of rare or endangered species being a presumptive significant threshold, but the Purple Needle Grass does not meet this requirement of being rare or endangered.[1] Indeed, Purple Needle Grass is so common a native landscaping component that our landscape architect

[1] There is a special presumption applicable to species contained in CEQA Guidelines section 15065(a)(1), which calls for a mandatory finding of significance (e.g., an EIR must be prepared) when there is substantial evidence that a project "has the potential to threaten to eliminate a plant or … substantially reduce the number or restrict the range of an **endangered, rare or threatened species**." (Emphasis added)

has already incorporated it into another landscape plan without it being considered an offsite mitigation component for another project (Tree Farm).

All of the grasses on the property have to be cut as low as possible to avoid fire danger and so the existing Purple Needle Grass that is intermixed with other non-native grasses serves no separate biological purpose than the non-native grasses.

Our plan is still to use Purple Needle Grass and other complimentary plantable native grasses on the portion of lot 19 but retain the bottom of the bowl for other meadow grasses so that it is usable.

We are pre-empting the 2 to 1 mitigation onsite via the Bonus Density Law, which is precisely what is intended by the incentives in the Bonus Density Law. I suppose we can discuss off-site mitigation, but if you try to square the Bonus Density Law incentives with this, in no other context would you invoke an incentive under the Bonus Density Law but then still comply with the pre-empted requirement offsite. While onsite mitigation has been preferred by the County when feasible, offsite mitigation would still be complying with the County requirement. If you pre-empt that requirement, then it seems you should not also be taking other actions to satisfy that requirement.

As to the areas being expanded per the current report, the small areas Stand 1 and 3 from 2002 have grown together to become larger Stand 6. The 2002 Stand 4 has grown in size. The stand in the northeast corner which runs through the "not apart parcel" has a portion of it an isolated part that is .1 to .2 acres that perhaps legally should not be considered part of Stand 9 as it is not connected by land on this legal parcel.

I note that the County previously had another project in which a lot split was first approved and then by the time the owner came in to get a Coastal Development permit for the house, the parcel had been consumed with native grasses (Jeter, Hope Ranch CDP).[2] In that case, the County specifically declined to enforce the new expanded native plant/wetland plant designation by either onsite or offsite restoration of like amount to the new wetlands/EHS area.

Also, as a general comment, the difference between the original Park Hill v.1 approval and Park Hill v.2 proposal is only additional homes consistent with a State Bonus Density. In the case of Wollmer vs. City of Berkeley (2009 179 Cal. App. 4th 933), the court held that a city of Berkeley approved Bonus Density project was a permissible State

[2] On December 1, 1998,in the *Jeter* matter, a biologist presented evidence at the Supervisors hearing that grass mowing on the property caused the wetland indicator plants to spread across the property. The Supervisors, however, ultimately approved the development project in *Jeter*. The County findings approving the CDP allowed wetlands impacts on the *Jeter* parcel included the finding that the payment of $1,000 to IVRPD for its wetlands restoration adequately mitigated the wetland impact. Jeter **97-CDP-241H AP01**A

Bonus Density Law project and the city's action in implementing the Density Bonus Law (the extra density and approval of incentives) was not a "project" under CEQA that required environmental review.

Another comment comes from a recent CEQA conference[3]. One of the presentations germane to what is happening in the real estate world was "Changing Previously Approved Projects: When do you have to start from scratch?"

While the topic is complex and very fact specific, it did demonstrate the CEQA preference for finality in environmental review so that once environmental review has been done for a project, it is a significant fact compared to one that has not gone through environmental review (see CEQA guidelines 15162 and Public Resources Code 21166).

Many of the project changes discussed in cases were much more dramatic than Park Hill which is additional lots being created through a State Bonus Density. An example is Mani Brothers Real Estate Group vs. City of Los Angeles. In that case, the first project never built was a 5 building downtown L.A. redevelopment consisting mainly of office space. In 2005, use was changed to residential use for which an Addendum to the 1989 EIR was prepared. A party challenged this in court, claiming that a subsequent EIR should have been prepared for this radical change (the 2005 change increased the project size by 500,000 square feet and added 800 residential units and nearly doubled building heights). The court found that the Addendum was appropriate.

While each case is fact specific, this issue is a recurring issue in California now, where prior un-built projects are being re-permitted.

Very truly yours,

Jeffrey C. Nelson

[3] (2010 California Environmental Quality Act 6th Annual Comprehensive Workshop, August 20, 2010, Santa Monica, California)

THE OAK CREEK COMPANY

July 13, 2010

Alex Tuttle
Anne Almy
Santa Barbara County
Planning and Development
123 E. Anapamu St.
Santa Barbara, CA 93101

Re: Response to Notice of Incompleteness
Park Hill Estates v.2
10TRM-00000-00001
059-290-041

Dear Alex and Anne,

This is a response to your letter of June 3, 2010 determining the above application is incomplete. We will address your numbered issues in order below, using the same numbers:

1. Attached is the Project Clean Water conceptual description of the proposed treatment measures and calculation of the water quality flow rate or water quality design volume for each proposed BMP so that project clean water can verify that adequate space is available and reserved for these measures.
2. Attached please find the revised grassland restoration plan prepared by Mark De La Garza of Watershed Environmental.
3. The building envelopes and grading will not intrude into the protected bedrock mortar area. The protection area outlined in the Flowers Civil Plan is the same as previously identified in Park Hill Estates v1. Flowers and Associates have modified the drawing to clarify the protection of that area.
4. Revised Flowers and Associates grading, drainage and utilities sheet to reflect the road width changes suggested by the Fire Department. As mentioned in the May 20, 2010 Subdivision Committee Review Hearing, Brian Hayden of County Fire had not received a copy of the Subdivision Improvement Plan. His comments in the May 20, 2010 letter reflect plans from the Tentative Map only. Please note the requirements from Fire that are to be shown on the map are included in the Subdivision Improvement Plan.

Also attached- an updated First American Preliminary Title Report as requested by the County Surveyor (we had complied with the permitting requirement of submitting an preliminary title report as required with the initial application), as

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well as an updated tally sheet of lots and lot sizes to replace that under tab 5 of our original submittal binder.

Advisories (Responses correspond to the County's letter)

1. The restoration plan makes it clear that "the area to be restored for a permanent protected easement shall be of comparable biological value to that which is destroyed." Indeed the native grasslands as newly restored and consolidated will be a significant improvement in the quality as well as an increase in the quantity of this resource. It is problematic whether developing the project results in "a significant native habitat area being eliminated". The areas are fragmented, heavily located on a separate parcel owned by another party and are not rare or endangered plants. They are readily available through local suppliers. More over, the property owners have no obligation to maintain the purple needle grass on the property independent of any permitting requirements. County Fire protection directives mandate that these grasses be cut short every spring and summer and the intermixed purple needlgrass is not distinguishable from other closely mown grasses in this state, and there is no evidence that they create any unique habitat environment compared to other non native grasses.

   We are using the one incentive under the state bonus density law to eliminate the 2:1 restoration requirement under the community plan. [1] As stated in our earlier legal analysis submitted with the application, it does not appear legally supportable for the County to require more than a 1:1 restoration. Similarly if the County had a requirement that a project that eliminated a low income unit had to replace it on a 2:1, 3:1 or 5:1 ratio, every replacement unit beyond one would be an illegal mitigation condition because it exceeds the impact caused by the project itself. There is no question that with long term maintenance the proposed restored native grass area is more sustainable than its current condition with no water or maintenance and required mowing for fire protection. We are confident that if the staff did recommend denial of the project on this basis and the County denied the project on that basis the County's action would be overturned and the Court would award attorney's fee's under the bonus density law. Here the applicant's and property owner's legal position is much stronger than in other housing cases in which the County has had denials not stand legal challenge including Vintage Ranch, Sungate Ranch, and Chase IV lots.[2]

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[1] We reserve the right to challenge having to use a bonus density incentive to override a condition that itself is legally impermissible by requiring excessive mitigation, beyond the proper legal obligation of the project.

[2] The administrative record in such a case would reflect that infill housing is sufficiently rare that the County held back the Cavaletto Tree Farm project (Filed 2001) for years requiring it to plan successively more and more housing units which has delayed that project going forward. A P&D representative stated in a News Press front page article that the County would never again allow an infill project with as low a density as Vintage Ranch (1.7 units per acre). Those positions cannot be consistent with the County trying to diminish housing opportunities including affordable housing opportunities in this application.

2. The County is in no position to try to limit the number of lots under the bonus density law and, we believe could not impose any other standards that defeated the development of housing on this site. The prior analysis concerning square footage per lot related to the square footages on other lots in the area, many of which are less than 1 acre.

The most recent approved 24 housing lots in the neighborhood involved on average smaller lots than Park Hill Estates v2 and the square footage permitted for that project was 5,000 square feet of house living space, plus other outbuildings and garages without a limit on them. As those are minimum car garages per the recorded CC&R's, that means that all of those would be at least a 5,600 square feet maximum without considering other buildings such as second units, etc. Those lots are mostly in the .5 to .6 acre size. A 5,300 square foot building in this project[3] with 650 sq. ft. of garage would result in a maximum square footage of the house of 4,650 square feet. While we expect most units to be below that size we want to provide buyers design flexibility consistent with what others have in the neighborhood. The most visible lots from public views are lots 1 & 2. Lot 1 will stay essentially the same size that it was, an acre. Lot 2 will have a much smaller house on it than previously proposed. That house will be no more than 1,200 square feet (living space), not the larger square footage previously anticipated. The project description limitation on building heights is the most material impact on neighborhood aesthetics. The southern buffer (lot 19) of 2.2 acres of open space continues to be a substantial buffer from neighbors, and the size of homes along San Antonio Creek Road will now be smaller because of the small home on lot 2. Moreover the Western lots 11 and 12 are nearly an acre and serve as a buffer on the western edge of the project.

3. The prior project's agreement to provide 50 ft. separation between homes is one of the conditions that contributed to the project being infeasible. The County has adopted rules and standards for setbacks and we have not sought any modifications of those setbacks. The enlarged setback was suggested by a neighbor in 2006 and the applicants agreed to it without fully recognizing its design constraints.

4. See response to County Surveyor's office by item below:

1. Title report information stated on the map doesn't match submitted title report. Please verify.

Response: See new updated preliminary title report from First American Title dated June 14, 2010.

2. Item #7 of existing easements on the map doesn't appear in the title report. Is there any reference to the document that actually created the easement?

Response: See PCOR item #14.

[3] For all lots except for Lots # 1, 11 & 12 which are all near 1 acre

3. Is item #9 fee or easement? Title report doesn't state the nature of the interest.

Response: This is an easement per the PCOR, see item 13.

4. Item #10 of existing easements shows different purpose of the easement than the title report. Show exterior boundary based on latest record documents. List the documents in notes.

Response: See item #5 of the PCOR.

5. Show exterior boundary based on latest record documents. List the documents in notes.

Response: Done. Boundary per Parcel Map # 11-429 recorded in book 9 page 44 of parcel maps.

6. Verify exterior boundary line along westerly line of proposed lot 5.

Response: Done. See revised Tentative Map.

7. Verify exterior boundary line along northerly line of proposed lots 1, 5, 4, and "Not a Part".

Response: Done. See revised Tentative Map.

8. Show all dimensions for proposed lots.

Response: Done. See revised Tentative Map.

9. Show curve radii for proposed streets.

Response: Done. See revised Tentative Map.

10. Show widths of existing streets.

Response: Done. See revised Tentative Map.

11. Owner and surveyor (civil engineer) signature is missing.

Response: See attached.

5. Done. See attached plan.

6. Please refer to the hydro calc's in the preliminary grading and drainage plan done by Flowers and Associates as to the size of the basin. The engineers informed us that in the previous proposal the basin was oversized for the amount of drainage onsite for an unknown reason and that the same size basin can handle the amount of drainage for the proposed site.

7. Comment noted.

8. Comment noted.

9. We plan to be actively engaged with the neighbors throughout this process. We have sent a letter to neighbors informing them of the project and introducing ourselves to the surrounding community. We plan on setting up a community meeting in the near future to go over the project and answer questions. The density of the proposed project, with lots approximately .7 acre to 1 acre will be consistent with the density of the surrounding neighborhood and average lot sizes will be larger than the neighboring La Romana project. The site has extensive infrastructure required for relatively few homes and a built density of 1.25 units per acre is an extremely low

density by any planning standard and maybe the lowest density local project to provide onsite affordable housing.

10. Comment noted.

11. Comment noted.

12. Comment noted.

13. Comment noted.

We respectfully request a meeting pursuant to Government Code section 65915 (D. 1) where it provides that an applicant for a bonus density project can request such a meeting.

This project is akin to The Loop Mixed Use v.2 which project modification from a previously approved project was processed in an efficient timeline, namely it was resubmitted, deemed complete within 70 days and then proceeded to the Planning Commission two weeks later. While we don't expect to be before the Planning Commission two weeks after completeness, it shows how streamlined a second version of an approved project can be. All aspects of development of this property were previously analyzed by the County and we submitted a document that identified every element of public input from the prior project approval and a response to that issue.

Thank you.

Very Truly Yours,

Jeffrey C. Nelson Jason Nelson

Cc: Bob Flowers, Flowers and Assoc.
Jason Schwan, Flowers and Assoc.
David Black, David Black and Assoc.

Enclosures:
Revised Vesting Tentative Subdivision Map (5 copies, 1 signed)
Revised Subdivision Improvement Plan (5 copies)
Preliminary Water Quality Exhibit (5 copies)
Landscape Plan (with original date added, 5 copies)
Revised Native Grassland Mitigation Plan (3 copies)

Updated lot Tally Sheet (on Tent. Subdivision map also) (3 copies)
Updated Preliminary Title Report (1 copy)

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April 28, 2010

Planning and Development
Santa Barbara County
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: Park Hill Estates v.2
Density Bonus Analysis

Dear Planners:

The Park Hill Estates property was previously permitted with no provision of on-site affordable housing and with the condition that the development & developer pay in-lieu fees instead. The prior application was 06TRM-00000-0001. This new application provides for on-site affordable housing pursuant to the State Bonus Density Law which is recognized as an alternative under the County's Housing Element. Set forth below is the analysis of the State Bonus Density law application to this parcel, which has been the basis for the design of Park Hill Estates v.2

This is an analysis of the state bonus density law found at CA Government Code section 65915-65918. It draws on the legislation itself and an article in the CA Real Estate Journal, volume 23 Number 2 "A Guide to CA Government Code section 65915: Density Bonus and Incentives for Affordable Housing".

That article states that an amendment to the state bonus density law effective January 1, 2005 was prompted by a growing awareness by legislators and the development community that section 65915 "did not work and was rarely utilized" and was passed with the goal to "revamp a voluntary program to increase the housing supply".

An applicant of Santa Barbara County has the option to be subject to either the state bonus density law or the County's inclusionary housing requirement. Few new South Coast projects have been subject to the most recent County inclusionary affordable housing requirements. Under the County's inclusionary requirements one must generally provide 10% moderate, 10% workforce, and pay in lieu fees of over $10,000 per market rate unit for not providing 10% low income housing on site. The existing condition (46) requires in lieu fees projected to be $784,728 paid before land use clearance. This requirement materially impairs project viability.

One project modification we are seeking is a bonus density to satisfy the affordable housing requirement. This adds units to the project, via the bonus density and provides the imprimatur of state housing law to support of the project as modified.

The state bonus density law has as two of the alternative thresholds providing at least 10% low income units compared to the base density or 5% very low units. This will be discussed below.

Resale controls

For low and very low income units the applicant shall agree and the County shall ensure that the units have continued affordability "for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program or rental subsidy program" (65915(c)(1)).

Calculating the bonus and the total housing count

"For housing developments meeting the criteria of subparagraph(A) of paragraph(1) of subdivision(b) the bonus density shall be calculated as follows (see tables 10% low units= 20% bonus density, 20% low income units=35% bonus density, 11% very low units= 35% bonus density.

The legislation provides that "all density calculations resulting in fractional units shall be rounded up to the next whole number. "***The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus...***" (Section 65915)(i)(5)

An example of this is if the underlying zoning permitted 14.1 units (14.1acres gross times 1units per acre equals14.1) it is handled in one of two ways. The first way is if "all density calculations resulting in fractional units shall be rounded up to the next whole number" means that 14.1units is rounded up to 15 units and if either 10% low units are provided or 5 percent very-low income units are provided (.75 of 15= 5%) the bonus density is 20% of the base density or 2.75 units which is rounded up to 3 units. 15 units plus 3 units= **18 total units** of which one is very low or 2 are low income units.

Alternatively if "all density calculations resulting in fractional units shall be rounded up to the next whole number" refers only to a number of affordable housing units and the number of additional housing units on top of the base density then the calculation would be that the base density would be rounded down to 14 units, 20% bonus on the 14 units would be 2.8 units, 20% of the base density would be 14 x.2 =2.8 bonus units which would be rounded up to 3 units yielding 14+3=**17 units total** of which one would be a very low or two low units would be the affordable component.

We are using the conservative method of not rounding up the number of base units from 14 to 15.

Statutory starting point: For Very low income units every 1% of very low set aside after the minimum of 5% entitles the applicant to an additional 2.5% density bonus.
For Low income units every 1% of very low set aside after the minimum of 10% entitles the applicant to an additional 1.5% density bonus.

14 base units is 2.07 units which is to be rounded up to 3 bonus units which means the calculation is 9 base units, three bonus units for a total of 12 units one of which is low income, so that permits 1 existing house, ten new homes and 1 low unit.

Used in Park Hill v.2- Very Low option
If one very low unit was provided and the base density is 14 units, 14 x 7% very low units=.98 units, rounded up to one very low unit, which would entitle the project to a 25% bonus density. 14 times .25 equals 3.3) or rounded up to 4 bonus units; 14+4=18 total units, of which there is 1 very low unit or 17 market units and 1 very low unit.
That is our project proposal.

In addition to a density bonus, the local government is also required to grant "incentives or concessions" to the developer. The developer is entitled to one incentive or concession for merely meeting the stench statutory minimum set-asides described above (5% very low or 10% low).

According to the article described above, incentives and concessions are defined as "a reduction in site development standards or a modification of zoning code or architectural design requirements and exceed the minimum State Building standards, mixed-use zoning approval, or other incentives the result in identifiable financial a sufficient and actual cost reductions proposed by even the developer or local government."

Because Section 65915 allows the developer to request any incentive or concession, the range of possibilities is quite broad, including "by right" development involves designating development as they used by right, meaning that the used is not require a conditional use permit or site plan review or other discretionary approval another possibility is exemption from other local ordinances that may cause an indirect increase in the cost of the housing units to be developed

Local governments are prohibited from applying any development standard that will have the effect of precluding the construction of a development meeting the affordability requirements at the densities or with the concessions or incentives permitted by Section 65915 development standards are broadly defined to include any zoning ordinance, general plan, specific plan, or other local law. Subject to certain exceptions, the statute allows for the density bonus and other incentives to supersede the application of local zoning regulations such as height limits, floor area ratio requirements, open space requirements, setbacks and on-site parking requirements as such land use regulations would preclude the development of the project and the utilization of the density bonus and other incentives.

The developer may request a waiver or reduction of development standards and will be entitled to attorney's fees and costs of suit if the court finds that the local government should have granted the developer's request.

Park Hill Estates v.2 has not yet elected an incentive, as all of the project planning is such that the project abides by all other existing zoning rules other than the inherent density and lot size minimum requirements which are necessarily altered and, per state law, considered to be consistent with zoning. (The Santa Barbara County Code 35.32.040D states "the granting of an incentive or concession shall not be interpreted, in and of itself, to require a comprehensive plan amendment, coastal plan amendment, zoning change or other discretionary approval separate from the discretionary approval otherwise required for the project.")

I would be pleased to discuss this further with you if you wish.

Very truly yours,

Jeffrey C. Nelson

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April 26, 2010

Planning and Development
Santa Barbara County
123 E. Anapamu St.
Santa Barbara, CA 93101

Re: Park Hill Estates v.2
Limits on permissible conditions

Dear Planners,

The Park Hill Estates project was approved in June, 2007 following years of earlier processing. It had several conditions of approval that have made the project not economically viable to go forward with notwithstanding that at the date of it's approval the local housing market had not yet been in steep decline. The downward market adjustment since then has only made the project a more challenging one economically.

The bonus density separately addresses additional housing units and elimination of the substantial in-lieu housing fee as one element of enhancing the viability of the project.

The application also seeks modification of other conditions which are identified in additional materials submitted with the Park Hill v.2 application. We would submit that many of these conditions do not meet the standard of conditions that meet the legal test for conditions which have to both have a nexus.

An individualized condition to a land use approval is a taking unless there is an "essential nexus" between the permit condition and a legitimate state interest and the condition is roughly proportional to the impact it seeks to address. [1]

Any physical invasion of property compelled by regulation requires compensation. This has always been true in cases involving a physical invasion or excessive interference with the use of property by a public agency.[2]

[1] Dolan v. City of Tigard, 512 U.S. 374, 385, 114 S. Ct. 2309, 2316, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Envtl. L. Rep. 21083 (1994); Herzberg v. County of Plumas, 133 Cal. App. 4th 1, 18, 34 Cal. Rptr. 3d 588 (3d Dist. 2005).

An example of these principles in this case is that, in the prior approval the County required "a proposed easement for native purple needle grass in favor of the County of Santa Barbara over a portion of" 7 private lots and all of the lot created for the retention basin.[3]

While two isolated areas of the property at the north east and southwest have areas of this native grass, which is not a protected species, any mitigation that involves the same acreage of 1.36 acres of re-planting will result in healthier and more sustainable stands of this and other newly introduced native grasslands because they will receive irrigation and gardening attention for the first time. Indeed the actual amount of native grasses will be increased more than 8 to 1 over what exists now because the areas that currently have some purple needle grass plants are only occupied at 11-15% of the area in native grasses. The 1.61 acres of proposed re-planting and new planting of native grasses will be 100% of that restoration area. See attached chart for calculation of native grass area and density of plants. It is not factually justified to have a greater amount of acreage dedicated to this biological resource than exists on the property now nor does it necessitate greater isolation from human or animal contact than has existed for native grasses historically or other landscaping that would exist on the property.

The project proposes more than 1.36 acres of replanted and newly created native grasses and it is integrated into the project in a reasonable fashion that will attract more active use in the bottom of the retention basin bowl.

The County imposes substantial fees for impact on parks by a new housing project and it is not fair reasonable to both base fees on an absence of usable park land and then deny a project a right to use some of its own land as usable parkland.

The bottom of the retention basin is also a candidate for periodic debris removal which makes it a better candidate for a seasonal active recreational use meadow grass that can be cleaned of debris periodically rather than to have it an off-limits native grass site.

The South Coast Conduit runs through the back of residential lots. The primary ownership of this property is of the landowners and will be of the lot owners. A landowner that has an easement through its property retains all use of that land that is not inconsistent with what is necessary for the easement. This easement is for a subsurface water pipeline to convey water from Cachuma to local reservoirs. The County or other parties could acquire and easement on which to plant native grasslands for any other purpose and could through this acquisition force this portion of backyards to be fenced off from the owners. The County or other agency would have to pay for the value of that taking and physical invasion. It is not reasonable or necessary to have the County have an easement over private lots for grassland restoration.

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[2] Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015, 112 S. Ct. 2886, 120 L. Ed. 2d 798, 34 Env't. Rep. Cas. (BNA) 1897, 22 Envtl. L. Rep. 21104 (1992); Landgate, Inc. v. California Coastal Com'n, 17 Cal. 4th 1006, 1017, 73 Cal. Rptr. 2d 841, 953 P.2d 1188, 28 Envtl. L. Rep. 21236 (1998).

[3] Park Hill Estates Tentative Tract No. 14,484 easement no. 12

The project Park Hill v.2 can successfully integrate a new grassland restoration project with native grasslands that exceed the current status of the native grasses in condition, maintenance, and long term preservation, and indeed proposes to do so. If the County imposes a condition that twice as much grassland restoration must occur on the property than what exists now, it is endeavoring to have this property mitigate impacts beyond those caused by the project itself, which action, we believe, is legally impermissible.

We would be pleased to discuss this further with you.

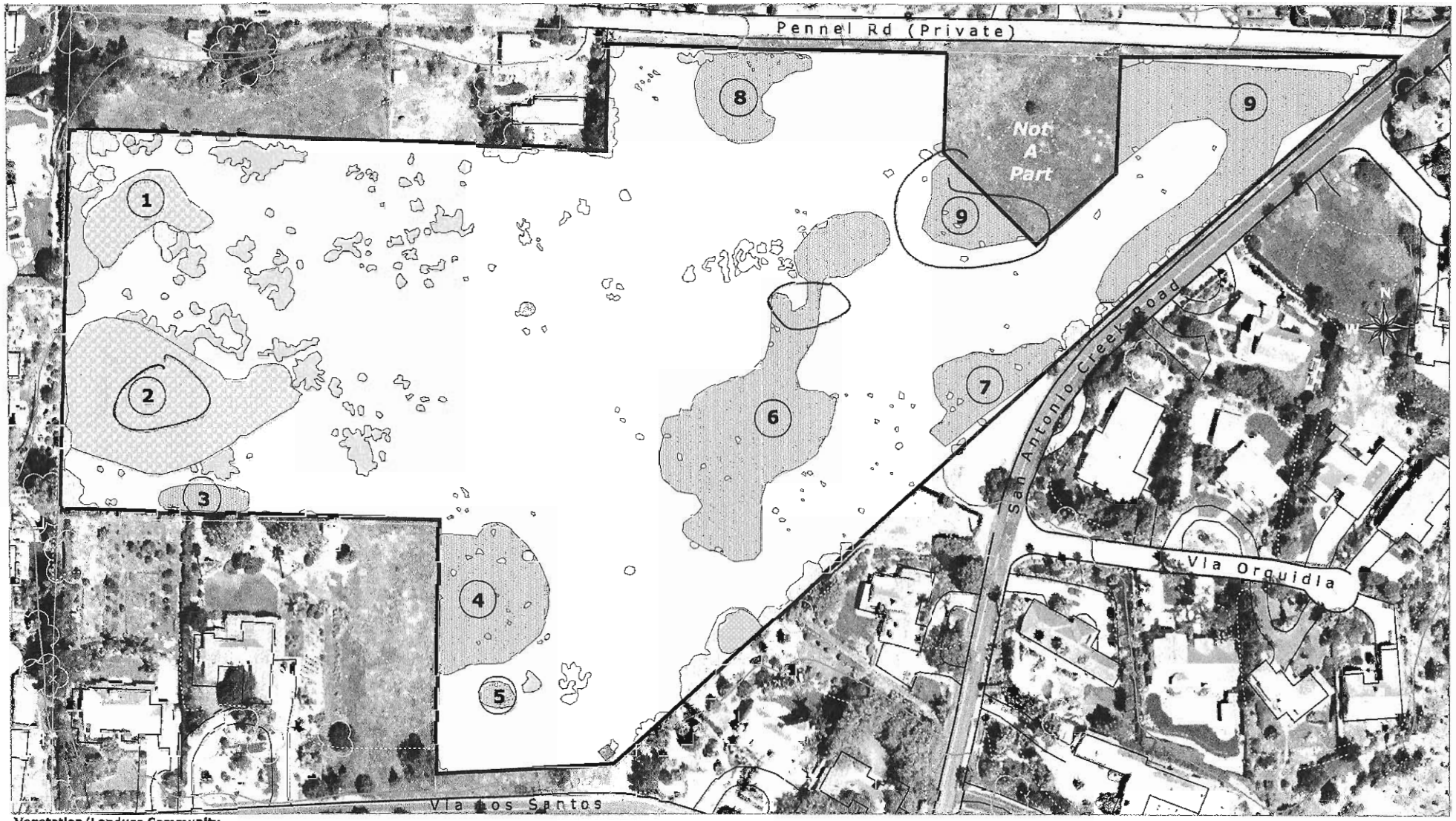
Very Truly Yours,

Jeffrey C. Nelson

Park Hill v.2
Grasslands calculated

Existing:	Acres of Native Grass	Average Density Coverage of natives	Acres of Native Grass Plants	
Stand 2	0.77	11.56%	0.089	
Stand 5	0.59	15.83%	0.093	
Total	1.36		0.182	
Proposed Mitigation				
Park Hill v.2	1.61	100%	1.61	
Replacement Ratio of native grass plants			8.83	To One--Plant Replacement Ratio

"Existing" Source: Park Hill Estates Final ND page 32, 33 2007
06TRM-00000-00001



Vegetation/Landuse Community

- Coastal Sage Scrub (Coyote bush/CA. Sagebrush Series)
- Coastal Sage Scrub with Native Grassland (Coyote bush/CA. Sagebrush Series w/ Purple Needlegrass Association
- Native Grassland (Purple Needlegrass Series)
- Non-Native Grassland (Cal. Annual Grassland)
- Coast Live Oak Tree (Ind.)
- Ornamental
- Rocks
- Utility
- Parcel Boundary (APN #059-290-041)

Airphoto Date: 3/16/2010

50 0 50 100 Feet

Figure 1. Vegetation/Landuse Communities

Park Hill Estates
2010 Vegetation Survey

Watershed Environmental, Inc. 6/31/10

Park Hill Estates v.2

December 17, 2010

Exhibit
2.

County of Santa Barbara

Environmental Thresholds and Guidelines Manual

Published May 1992
Revised January 1995, October 2001 and October 2002
Replacement pages July 2003

Planning and Development Department

Approved September 27, 1994 by the Santa Barbara County Board of Supervisors

6. BIOLOGICAL RESOURCES

A. INTRODUCTION

Federal and State laws and adopted County policies require the protection of natural habitats and associated wildlife and vegetation in recognition of their many values, including maintaining a healthy balance between urban built areas and supportive natural environment, nutrient recycling, providing for watershed protection, protection against erosion, cleansing of air and water, food chain support, scientific and medical research, education, recreation, aesthetics, and for the intrinsic value of wildlife and vegetation and their natural ecosystems.

Santa Barbara County has a wide diversity of habitat types, including chaparrals, oak woodlands, wetlands and beach dunes. Preservation of large contiguous habitat areas is the key to preserving biodiversity and avoiding additional species becoming rare, endangered or extinct.

Due to the complexities of ecosystems and the many factors involved in assessing the value of biological resources and project impacts, general qualitative guidelines rather than numerical thresholds are provided.

B. LEGAL AUTHORITY

1. CEQA Guidance for Biological Impact Assessment

The following sections of the State CEQA Guidelines provide general direction for the evaluation of biological resource impacts as a part of the environmental review of proposed projects.

California Environmental Quality Act (CEQA) §15065 states that a Lead Agency shall find that a project may have a significant effect on the environment and thereby require an Environmental Impact Report (EIR) to be prepared for the project where the project has the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal.

CEQA Appendix G states that a project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(c) Substantially affect a rare or endangered species of animal, plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species; and

(e) Substantially diminish habitat for fish, wildlife or plants.

2. Federal and State Requirements for Protection of Biological Resources

Environmental impact analysis and mitigation needs to take into account Federal and State biological resource regulations. The Federal Endangered Species Act and California Endangered Species Act formally list plant and animal species determined to be rare, threatened or endangered, or candidate species, and establish regulations for protecting these species and their habitats. Additional information regarding these statutes is provided in a separate technical document (RMD Biological Resources Technical References, 1994).

Other federal statutes include the National Environmental Policy Act (NEPA), the Clean Water Act Section 404 (for protection of wetlands), Bald Eagle Protection Act, Migratory Bird Treaty Act, Executive Order 11990 (wetlands protection), Rivers and Harbors Act Section 10, Marine Protection, Sanctuary and Research Act, Marine Mammal Protection Act, and Section 1601 and 1603 Stream Alteration Agreements.

3. County Biological Resources Policies

Requirements for the protection of biological resources in the unincorporated area of Santa Barbara County are provided by the Comprehensive Plan Conservation Element, Environmental Resource Management Element (ERME), Land Use Element, Community Plans, and the Local Coastal Plan. These documents identify sensitive habitats and species, and provide measures to direct project design and policies to protect biological resources.

C. GUIDELINES FOR ASSESSMENT OF BIOLOGICAL RESOURCES IMPACTS

1. Initial Study Review Process

The term "biological resources" refers to plant and animal species and habitats that support plant and animal species.

The value of a habitat and the resources present on the project site and potential project impacts are assessed preliminarily during the initial study review process. The first task in the assessment of biological impacts is an evaluation of the plant and animal resources on the project site and the second focuses on the project impact itself, using a series of assessment factors. The initial study evaluation determines whether an EIR or Mitigated Negative Declaration should be prepared based upon substantial evidence (not public controversy) that there is the potential for significant adverse biological impacts to occur as a result of a proposed project.

Based on a preliminary site assessment and review of existing historical resource information (designated environmentally sensitive habitat (ESH) areas, biological resource maps, reports, surveys, and Natural Diversity Data Base maps, available in

RMD), staff utilizes the methodologies described below to determine whether resources on a site are biologically valuable, and whether a project may result in a significant impact to biological resources. In some instances a biological consultant survey of the site is required to determine the presence or absence of sensitive species and the value of habitat on and surrounding the project site, and to identify potential project impacts and feasible measures which could be incorporated into the project design to avoid or minimize the potentially significant impacts. Guidelines for performance of biological studies and sensitive resource definitions are provided in a separate technical document.

The determination of impact is done on a case-by-case basis. Because of the complexity of biological resource issues, substantial variation can occur between cases. The following sections identify questions and factors used in assessing the value of biological resources, and the significance of project impacts.

2. Evaluation of Resources on the Project Site

(1) Resources Inventory

a. What biological communities are on the site? What size area?

b. Is the habitat type relatively common? Is it rare and occurring in only a few places in the region, or significantly declining in extent and/or quality? Is the habitat designated as an ESH area on County planning documents, or designated as "critical habitat" for listed species by Federal or State agencies?

c. Is the site in an urban, rural or outlying area? What are the uses surrounding the site? Is the habitat isolated or is it contiguous with adjacent habitat or close enough to provide a link between habitats?

d. Does the habitat support resident species or migratory species? Are there protected species (eg., endangered or threatened), or species of candidate, special, or local concern or healthy rare species?

(2) Condition and Quality

a. Is the habitat pristine or disturbed? How much or to what degree?

b. How biologically productive is it? Does it support an especially rich and diverse plant and/or wildlife population?

c. Is the habitat resource (including the surrounding area if it is related) large enough to be viable?

3. Evaluation of Project Impacts

Assessment of impacts must account for both short-term and long-term impacts. Thus the assessment must account for items such as immediate tree removal and longer-term,

more subtle impacts such as interruption of the natural fire regime or interference with plant or animal propagation.

(1) Types of Impacts to Biological Resources

Disturbance to habitats or species may be significant, based on substantial evidence in the record (not public controversy or speculation), if they substantially impact significant resources in the following ways:

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

(2) Less Than Significant Impacts

There are many areas in the County where there is little or no importance to a given habitat and it is presumed that disruption would not create a significant impact. Examples of areas where impacts to habitat are presumed to be insignificant include [1]

a. Small acreages of non-native grassland if wildlife values are low.

b. Individuals or stands of non-native trees if not used by important animal species such as raptors or monarch butterflies.

c. Areas of historical disturbance such as intensive agriculture.

d. Small pockets of habitats already significantly fragmented or isolated, and degraded or disturbed.

e. Areas of primarily rudural species resulting from pre-existing man-made disturbance.

[1] Pursuant to CEQA, a presumption based upon County thresholds that a project's impact is insignificant is rebutted if there is substantial evidence in light of the whole record before the lead agency that the project may have a significant impact on the environment (Pub. Res. Code §21082.2).

(3) Impact Assessment Factors

In addition to the criteria listed in (1) "Types of Impacts to Biological Resources" above, the following questions and factors are used in assessing the significance of project impacts on biological resources.

(a) Size

How much of the resource in question both on and off the project site would be impacted? (percentage of the whole area and square footage and/or acreage are both useful to know)

How does the area or species that would be impacted relate to the remaining populations off the project site? (% of total area or species population, either quantitatively or qualitatively.)

(b) Type of Impact

Would it adversely indirectly affect wildlife (light, noise, barriers to movement, etc.)?

Would it remove the resource or cause an animal to abandon the area or a critical activity (e.g., nesting) in that area?

Would it fragment the area's resource?

(c) Timing

Would the impact occur at a critical time in the life cycle of an important plant or animal (e.g., breeding, nesting, or flowering periods)?

Is the impact temporary or permanent? If it is temporary, how long would the resource take to recover?

Would the impact be periodic, of short duration, but recur again and again?

D. HABITAT-SPECIFIC IMPACT ASSESSMENT GUIDELINES

The following section provides additional impact assessment guidelines specific to several biological communities. These guidelines are to be used in conjunction with the general impact assessment guidelines described in Section III. (Note: Not all habitat types found in Santa Barbara County are addressed by these habitat-specific guidelines. Habitat types not addressed here are assessed with the general impact assessment guidelines in Section III.)

1. Wetlands

(1) Description: Wetlands are among the most biologically productive of habitats, and the County's wetlands have been diminished both in areal extent and quality from the historic condition. As a result, naturally-occurring wetlands are an important resource, and projects with potential impacts to wetlands must be carefully evaluated. Examples of wetlands include coastal salt and brackish

c. Disruption of larger plant community (eg: grassland) within which vernal pool occurs, isolation or interruption of contiguous habitat which would disrupt animal movement patterns, seed dispersal routes or increase vulnerability of species to weed invasion or local extirpation. For example, fragmentation of habitat may interrupt interaction between the habitat and the organisms within the pools (pollination, seed, invertebrate and vertebrate dispersal, provision of drinking and bathing water, etc.). These types of direct and indirect impacts are potentially significant.

2. **Riparian Habitats**

(1) **Description:** Riparian habitat is the terrestrial or upland area adjacent to freshwater bodies, such as the banks of creeks and streams, the shores of lakes and ponds, and aquifers which emerge at the surface such as springs and seeps (Bowland and Ferren 1992). A rich assemblage of wildlife series, including birds, mammals and amphibians are found in riparian habitats. In Santa Barbara County, riparian habitat occurs in and along the County's four major rivers (Santa Ynez, Santa Maria, Cuyama and Sisquoc) and in and along the County's many creeks and streams. This habitat can also occur along arroyos and barrancas, and other types of drainages throughout the County.

(2) **Riparian Impact Assessment Guidelines:** The following types of project-related impacts may be considered significant:

a. Direct removal of riparian vegetation.

b. Disruption of riparian wildlife habitat, particularly animal dispersal corridors and or understory vegetation.

c. Intrusion within the upland edge of the riparian canopy (generally within 50 feet in urban areas, within 100 feet in rural areas, and within 200 feet of major rivers listed in the previous section), leading to potential disruption of animal migration, breeding, etc. through increased noise, light and glare, and human or domestic animal intrusion

d. Disruption of a substantial amount of adjacent upland vegetation where snch vegetation plays a critical role in supporting riparian-dependent wildlife species (eg: amphibians), or where such vegetation aids in stabilizing steep slopes adjacent to the riparian corridor, which reduces erosion and sedimentation potential.

e. Construction activity which disrupts critical time periods (nesting, breeding) for fish and other wildlife species.

3. **Native Grasslands**

(1) **Description:** Native Grassland in California once occurred over 8 million acres in the Central Valley and in scattered patches along the Coast Ranges (Heady, 1977). Few stands of native grasslands remain in the state and the habitat is considered rare both in the state and within the county.

(2) **Native Grassland Habitat Impact Assessment Guidelines:**

a. For purposes of resource evaluation in Santa Barbara County, a native grassland is defined as an area where native grassland species comprise 10 percent or more of the total relative cover. [4,5]

b. Removal or severe disturbance to a patch or patches of native grasses less than one-quarter (1/4) acre, which is clearly isolated and is not a part of a significant native grassland or an integral component of a larger ecosystem, is usually considered insignificant.

4. **Oak Woodlands and Forests**

(1) **Description:** There are three primary types of oak woodlands in Santa Barbara County: Valley Oak, Coast Live Oak, and Blue Oak woodlands. The number, type, and density of oak trees, and the relationship between trees and understory are principal characteristics which define the various types of woodlands. Oak habitats support a diverse wildlife population, and offer abundant resources to wildlife including food sources, shade in summer, shelter in winter, perching, roosting, nesting, and food storage sites.

(2) **Impact Assessment Guidelines for Woodlands and Forest Habitat Areas**:[6] Project-created impacts may be considered significant due to changes in habitat value and species composition such as the following:

a. Habitat fragmentation

b. Removal of understory

c. Alteration to drainage patterns

[4] The California Department of Fish and Game, Natural Heritage Division uses the 10% relative cover figure in determining acreages of remaining native grasslands (Keeler-Wolf, Natural Diversity Data Base, personal communication May 1992). (Relative cover is the cover of a particular species as a percentage of total plant cover of a given area. [Barbour, Burk & Pitts 1980].)

[5] Native grasslands which are dominated by perennial bunch grasses such as purple needlegrass (*Stipa pulchra*) tend to be patchy (the individual plants and groups of plauts teud to be distributed in patches). Therefore, for example, where a high density of small patches occur in an area of one acre, the whole acre should be delineated if native grassland species comprise 10 percent or more of the total relative cover, rather than merely delineating the patches that would sum to less than one acre.

[6] The impact assessment guidelines for oak trees, woodlands and forest habitat do not apply to non-discretionary level oak tree removal of protected and unprotected size under the Grading Ordinance Guidelines for Native Oak Tree Removal that are incorporated as Appendix A in County Code, Chapter 14. Non-discretionary-level oak tree removal of protected and unprotected size that is subject to and in compliance with these Guidelines has been previously analyzed in the program EIR, 00-EIR-07 RV1.

d. Disruption of the canopy

e. Removal of a significant number of trees that would cause a break in the canopy or disruption in animal movement in and through the woodland

5. **Impact Assessment for Individual Native Trees**[6]

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Exhibit

3.

DevStd BIO-GV-19.2: Washing of concrete, paint, or other equipment shall be allowed only in areas where polluted water can be contained during construction and in industrial settings.

Program BIO-GV-19.3: The County shall develop a plan for the creation of a Devereux Slough Ecological Preserve. The Plan should assist in the coordination of a biological protection plan within this ecosystem area and pursue protection of the area as a unit. However, the Plan should acknowledge the different ownerships of affected parcels and that each separate property's Preserve Plan shall be coordinated with the adjacent properties. The Preserve shall encompass the entire Devereux Slough regional ecosystem and shall ensure protection of biological resources and water quality within the system. Particular emphasis shall be placed upon protecting ESH areas on the West Devereux and Santa Barbara Shores Specific Plan properties. The plan shall also contain restoration proposals for degraded sections of Devereux Creek.

Policy BIO-GV-20: Where appropriate, voluntary open space and conservation easements should be considered by project applicants and supported by the County as a method to preserve important biological habitats.

Policy BIO-GV-21: The use of locally occurring native plants propagated from plants in close proximity to the sites to be revegetated in landscaping shall be encouraged, especially in parks, buffers adjacent to native habitats and in designated open space.

Policy BIO-GV-22: Where sensitive plant species and sensitive animal species are found pursuant to the review of a discretionary project, efforts shall be made to preserve the habitat in which they are located to the maximum extent feasible. For the purposes of this policy, sensitive plant species are those species which appear on a list in the County's list of locally rare, rare or endangered plants and the California Native Plant Society's *Inventory of Endangered Vascular Plants of California*. Sensitive animal species are defined as those animal species identified by the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/or are listed in Tate's *The Audubon Blue List* (birds).

Action BIO-GV-22.1: Where sites proposed for new development contain sensitive or important habitats and areas to be preserved over the long term, the impacts to these habitats shall be avoided or mitigated to the extent feasible. One method to assist in the long term protection of such areas is by means of requiring project applicants to dedicate open space easements covering such areas. Other methods include onsite restoration programs utilizing appropriate locally occurring native species propagated from plants in close proximity to the site, and/or contributions toward habitat acquisition and management. One or a combination of the above shall be required, as determined by the evaluating resource specialist and regulatory agency. Where onsite preservation is infeasible, or not desirable in terms of long-term preservation, an offsite easement and/or restoration which covers comparable habitat/area and will ensure long-term preservation may be considered.

DevStd BIO-GV-22.2: A minimum replacement ratio of 2:1 shall be required for significant native habitat areas eliminated. The area to be restored, acquired, or dedicated for a permanent protective easement shall be of comparable biological value to that which is destroyed.

Program BIO-GV-22.3: The County should develop a fee program to mitigate impacts from projects with the potential to significantly impact (either on a project-specific or cumulative basis) any of the regional ecological systems. Any fees established shall be dedicated toward acquisition and management of ecological preserves.

Action BIO-GV-22.4: The County intends to prepare a public information pamphlet which explains the biological policies, development standards and actions contained in this Community Plan and how they are to be applied on a project-specific basis.

Park Hill Estates v.2

December 17, 2010

Exhibit
4.

Rare Plants of Santa Barbara County

Central Coast Center for Plant Conservation
Santa Barbara Botanic Garden, 1212 Mission Canyon Rd, Santa Barbara 93105

This list was prepared from records maintained as part of a specimen-based database at the Santa Barbara Botanic Garden. It includes plants from the mainland and four California Channel Islands (Santa Barbara, Santa Cruz, Santa Rosa, and San Miguel). Records were primarily acquired from verified herbarium specimens deposited at several herbaria, including the University of California at Berkeley (JEPS, UC), the California Academy of Sciences (CAS, DS), the University of California at Santa Barbara (UCSB), and the Santa Barbara Botanic Garden (SBBG). Additional records were acquired from peer-reviewed publications and professional reports that refer to specimens at other herbaria or verified observations (e.g., California Natural Diversity Database).

Nomenclature follows The Jepson Manual (Hickman, 1993), except for addenda published on the Jepson Herbarium Online Interchange (ucjeps.berkeley.edu/jepson_flora_project.html) and recent scientific publications (e.g., Flora of North America, 1999-2007, Oxford University Press). Additional information, including nomenclature and distributional records based on documented specimens, can be accessed on the Jepson Herbarium Online Interchange.

Any two documented locations that were estimated to be more than 1 km apart are considered to represent separate "occurrences". Only those species, subspecies, and varieties represented by 1-8 documented natural "occurrences" in Santa Barbara County are listed here. The choice of 1-8 "occurrences" is arbitrary, but based on preliminary observations that including species with 9-12+ occurrences would double the number of listed species. Inclusion of a larger number of taxa serves to distract attention from those currently requiring special attention.

Rarity estimated from number of occurrences does not necessarily provide an accurate estimate of decline or vulnerability to loss of populations. The number of current populations relative to historic localities, population size, potential habitat, and sensitivity to environmental factors are important to collectively determining vulnerability. Decline can only be determined by periodic inventories and regular monitoring of known populations, including assessment of current conditions and potential environmental effects (e.g., agricultural practices, urbanization, competition from naturalized alien species, intensive human activity). Unfortunately, adequate inventory and monitoring data is not available for many of the species on this list. Consequently, it is difficult to determine which species have experienced significant decline, but all remain candidates for special concern. The list will be updated whenever creditable evidence is provided to substantiate either deletions or additions.

Some species reported from Santa Barbara County (e.g., C. F. Smith. A flora of the Santa Barbara region, 2nd edition, 1998) are excluded, because no specimens have been located to support the report. Examples include *Phlox austromontana* and *Physocarpus capitatus*. Other examples include species whose reports were based on misidentified specimens (e.g., *Chorizanthe rectispina*, *Navarretia subuligera*, *Phacelia cryptantha*, *Sidotheca* [*Oxytheca*] *caryophylloides*, *Ribes sericeum*). Some species listed in the CNPS Inventory (6th edition, 2001) are excluded, because they are known from 10 or more occurrences. Some examples include *Baccharis plummerae* subsp. *plummerae* and *Lyonothamnus floribundus* subsp. *aspleniifolius*. A few state or federally listed species (*Heuchera maxima*,

Helianthemum greenei) are excluded, because they also are known from 10 or more occurrences, and are either protected from decline or are showing an increase in numbers. Named hybrids of inter-specific crosses have not been included, unless one or both of the parental species are rare (e.g., *Quercus* ×*kinseliae*, a rare hybrid between *Q. dumosa* and *Q. lobata*).

In general, species on this list are found in habitats with limited areas in Santa Barbara County, including high elevation conifer forests (e.g., *Calocedrus decurrens, Collomia tinctoria, Pedicularis semibarbata, Trisetum canescens*), vernal pools (e.g., *Eryngium vaseyi, Isoetes howellii, Lilaea scilloides, Plagiobothrys trachycarpus*), coastal bluffs and terraces (e.g., *Ceanothus thyrsiflorus* var. *griseus, Erysimum capitatum* subsp. *lompocense, Leptodactylon californicum* subsp. *tomentosum, Sanicula arctopoides*), coastal dunes (e.g., *Cirsium rhothophilum, Eriastrum densifolium* var. *densifolium, Monardella crispa, Senecio blochmaniae*), marshes (e.g., *Symphyotrichum subulatum* var. *parviflorum, Cladium californicum, Echinodorus berteroi, Juncus acutus* subsp. *leopoldii*), and serpentinite outcrops (e.g., *Caulanthus amplexicaulis* var. *barbarae, Cupressus sargentii, Helianthus bolanderi, Quercus durata* var. *durata*).

A number of species in Santa Barbara County are common elsewhere but have been included in this list, because they are at the geographic limits of their natural distribution. Among them are *Calamagrostis rubescens, Carex douglasii, Erigeron philadelphi*cus, *Gaultheria shallon, Helianthus bolanderi, Horkelia yadonii, Iris douglasiana, Pseudotsuga menziesii, Trillium angustipetalum,. Triteleia laxa*, and *Trisetum canescens*. Such populations are of special biological interest because they may represent genetic variation not found elsewhere.

All comments, questions, and requests for information regarding names, record entries, and information on a particular species should be directed to Dr. Dieter Wilken, Central Coast Center for Plant Conservation, Santa Barbara Botanic Garden, 1212 Mission Canyon Road, 93105. Email: dwilken@sbbg.org.

Proposals for additions or deletions should be accompanied by documented specimens or citation of voucher specimens that have been deposited in a public herbarium and verified by a specialist.

Notes in parentheses appearing after names. Endemic to Santa Barbara County = (endemic); endemic to or occurring in Santa Barbara County only on the Channel Islands = (ISL); CNDBB Special Plant List = (SP); State Rare = (SR); State Threatened = (ST); State Endangered = (SE); Federally Threatened = (FT); and Federally Endangered = (FE). Synonyms are shown as "Original Name" = "Accepted Name" or Accepted Name [Original Name].

Scientific Name	**Common Name**
Abies concolor	white fir
Abronia maritima (SP)	red sand-verbena
Acaena pinnatifida var. *californica*	California acaena
Achnatherum hymenoides	Indian rice grass
Agoseris apargioides	seaside agoseris
Agrostis hooveri (SP)	Hoover's bent grass
Agrostis microphylla	small-leaved bent grass
Allium amplectens	narrow-leaved onion

Scientific Name	Common Name
Monardella undulata (SP)	curly-leaved monardella
Monolopia major	cupped monolopia
Monolopia congdonii (FE)	San Joaquin woolly-threads
Monolopia major	cupped monolopia
Montia fontana (ISL)	water chickweed
Muhlenbergia utilis	aparejo grass
Myosurus minimus (SP)	little mousetail
Navarretia intertexta	needle-leaved navarretia
Navarretia mellita	honey-scented navarretia
Nemacladus capillaris	common nemacladus
Nemacladus ramossissimus	Nuttall's nemacladus
Opuntia prolifera = *Cylindropuntia prolifera*	
Orobanche parishii subsp. *brachyloba* (SP)	short-lobed broomrape
Osmorhiza brachypoda	
Oxytheca parishii var. *abramsii* (SP)	Abram's oxytheca
Oxytheca parishii var. *parishii*	Parish's oxytheca
Parishella californica	parishella
Parnassia californica [*P. palustris* var. *californica*]	grass-of-Parnassus
Parnassia palustris var. *californica* = *Parnassia californica*	
Pedicularis semibarbata	pine lousewort
Penstemon rostriflorus	scarlet penstemon
Penstemon speciosus	showy penstemon
Pentachaeta alsinoides	tiny pentachaeta
Pentachaeta exilis subsp. *exilis*	meager pentachaeta
Pentachaeta fragilis (SP)	fragile pentachaeta
Perideridia parishii subsp. *latifolia*	Parish yampa
Phacelia davidsonii	Davidson's phacelia
Phacelia grisea	Santa Lucia phacelia
Phacelia insularis var. *insularis* (ISL; endemic; FE)	northern Channel Islands phacelia
Phalaris angusta	Timothy canarygrass
Phalaris californica	California canarygrass
Phalaris lemmonii	Lemmon's canarygrass
Phyla lanceolata	lance-leaved frogfruit
Pilularia americana	American pillwort
Pinus jeffreyi	Jeffrey pine
Pinus lambertiana	sugar pine
Pinus torreyana subsp. *insularis* (ISL; endemic; SP)	Santa Rosa Island Torrey pine
Piperia elegans subsp. *elegans*	elegant rein orchid
Piperia elongata	dense flower rein orchid
Piperia michaelii (SP)	Michael's rein orchid
Plagiobothrys collinus var. *californicus*	California popcorn flower
Plagiobothrys trachycarpus	rough-fruited plagiobothrys
Plagiobothrys undulatus	coast plagiobothrys
Plantago maritima	goose tongue
Plantago ovata	desert indian-wheat

Scientific Name	Common Name
Pogogyne douglasii	Douglas' pogogyne
Polygala cornuta var. *fishiae* (SP)	Fish's milkwort
Potamogeton foliosus var. *foliosus*	leafy pondweed
Potamogeton pusillus	small pondweed
Potentilla rivalis	brook cinquefoil
Prunus fasciculata var. *punctata* (SP)	sand almond
Pseudotsuga menziesii	Douglas fir
Psilocarphus brevissimus var. *brevissimus*	dwarf woolly-heads
Psilocarphus tenellus var. *globiferus*	round woolly-heads
Pyrola picta	white-veined wintergreen
Quercus dumosa (SP)	Nuttall's scrub oak
Quercus ×kinseliae (endemic)	Kinsel's oak
Quercus durata var. durata	leather oak
Quercus palmeri	Palmer's scrub oak
Ranunculus cymbalaria var. *saximontana*	desert buttercup
Ranunculus sceleratus	cursed buttercup
Ribes menziesii	canyon gooseberry
Ribes thacherianum (ISL; endemic; SP)	Santa Cruz Island gooseberry
Rorippa gambelii (ST; FE)	Gambel's water-cress
Rosa gymnocarpa	wood rose
Rubus parviflorus	thimbleberry
Salix sitchensis	Sitka willow
Samolus parviflorus	water pimpernel
Sanicula arctopoides	footsteps of spring
Sanicula hoffmannii	Hoffmann's sanicle
Sarcodes sanguinea	snow plant
Scirpus robustus	sturdy bulrush
Scribneria bolanderi	Scribner's grass
Senecio aphanactis (SP)	rayless ragwort
Senecio aronicoides	California ragwort
Senecio astephanus	San Luis Obispo ragwort
Senecio blochmaniae (SP)	Blochman's ragwort
Sesuvium verrucosum	verrucose sea-purslane
Shepherdia argentea	silvery buffalo-berry
Sibara filifolia (ISL; FE)	Santa Cruz Island rock cress
Sidalcea hickmanii subsp. *parishii* (SR)	Parish's checker-bloom
Sidalcea malviflora subsp. *californica*	California checker-bloom
Smilacina racemosa var. *amplexicaulis*	feathery false lily-of-the-valley
Stachys ajugoides var. *ajugoides*	bugle hedge nettle
Stachys chamissonis var. *chamissonis*	coast hedge nettle
Stillingia linearifolia (ISL)	linear-leaved stillingia
Streptanthus campestris (SP)	southern jewel-flower
Suaeda esteroa (SP)	estuary seablite
Suaeda taxifolia (SP)	woolly seablite
Swertia neglecta (SP)	pine swertia

Scientific Name	Common Name
Symphoricarpos rotundifolius var. *parishii*	Parish's snowberry
Symphyotrichum subulatum var. *parviflorum* [*Aster subulatus* var. *ligulatus*]	slender aster
Thelypteris puberula var. *sonorensis* (SP)	Sonoran maiden fern
Thermopsis californica var. *argentata* (SP)	silvery false lupine
Thermopsis macrophylla (endemic; SR)	Santa Ynez false lupine
Thysanocarpus conchuliferus (ISL; endemic; FE)	Santa Cruz Island fringe pod
Trifolium barbigerum	bearded clover
Trifolium cyathiferum	cup clover
Trifolium obtusiflorum	clammy clover
Trifolium oliganthum	few flower clover
Trifolium palmeri (ISL)	southern island clover
Triglochin concinna	Utah arrow-grass
Triglochin maritima	seaside arrow-grass
Triglochin striata	threerib arrow-grass
Trillium angustipetalum	narrow petal wakerobin
Triphysaria eriantha	yellow owl's-clover
Triphysaria pusilla	dwarf owl's-clover
Trisetum canescens	tall trisetum
Triteleia hyacinthina (ISL)	white brodiaea
Triteleia laxa	Ithuriel's spear
Turricula parryi	poodle-dog bush
Verbena scabra	sandpaper vervain
Wolffia columbiana	coastal water-meal
Wolffiella lingulata	mud midget

Excluded Species

Excluded species are those for which no documentation exists at any known herbarium, or those based on a misidentification. These names are provided here, because they have been previously reported from Santa Barbara County and may appear on lists of putatively rare plants.

Calycadenia villosa (SP) — dwarf calycadenia
(based on a labeling error of a single specimen at UC Berkeley)

Chorizanthe rectispina — straight-awned spine-flower
(based on misidentifications of *C. uniaristata*)

Hemizonia paniculata = *Deinandra paniculata*
(based on misidentifications of *D. (Hemizonia) increscens*)

Navarretia subuligera — awl-leaved navarretia
(based on misidentifications of *N. intertexta*)

Phacelia cryptantha limestone cryptantha
(based on misidentifications of *P. cicutaria*)

Phlox austromontana western mountain phlox
(reported from San Rafael Mtns in literature but not documented; nearest known locality is Mount Pinos, Kern and Ventura counties)

Physocarpus capitatus western nine bark
(reported from Santa Barbara County in literature, but not documented; nearest know localities are in southern Santa Lucia Mtns of San Luis Obispo County)

Quercus parvula var. shrevei Shreve's oak
(based on misidentifications of *Q. parvula* var. *parvula* or *Q. wislizeni*)

Ribes sericeum Santa Lucia gooseberry
(based on misidentifications of *R. amarum*)

Sidotheca [*Oxytheca*] *caryophylloides*
(reported from Santa Barbara County in literature, but not documented; nearest known locality is Pine Mountain in Ventura County)

Viola pinetorum goose-foot violet
(reported from San Rafael Mtns in literature but not documented; nearest known locality is Pine Mountain in Ventura County)

NELSON LAW FIRM
735 STATE STREET
SUITE 212
SANTA BARBARA, CALIFORNIA 93101

JEFFREY C. NELSON

Phone (805) 845-7710
Jeff@jeffnelsonlaw.com

December 17, 2010

Glenn Russell
Director
Planning and Development
123 E Anapamu St
Santa Barbara Ca.

Re: Park Hill Estates v.2 bonus density request

Dear Glenn,

This is a renewed request for specific incentives or concessions for a State Bonus Density infill housing project. We previously made a request for concessions in our letter that is attached as exhibit A and we have not received a definitive response on that. On December 15, Anne Almy and Alex Tuttle called me to state that the County was inclined to change from a Negative Declaration to an EIR which will derail the project and the bonus density request and might be considered action by a local government to refuse the request under which the applicant has a right to bring suit and is entitled to an award of attorneys fees and cost of suit if the court finds the local government wrongfully refused a request (govt. code section 65915(d)(3)).

The issue is the presence of nine or 10 small isolated purple needle grass (Nassella Pulchra) which exist on the property and have increased in acreage since this project was first approved in 2007. The property has not been developed in that time because of the housing recession and is going through re-permitting which is a common occurrence in California now.

We believe it is unquestioned that there will be more purple needle grass plants that will be maintained in a sustainable fashion after the project than exists now. The disparate patches of grass qualify for potential mitigation under the County standards so long as the density of those native but common purple needle grass plants exceeds 10% of the vegetation of a stand.

The exact acreage of purple needle grass is subject to some dispute as two small stands are connected to other stands now though most of the intervening property between the stands is either off this property (stand 9), or mostly non-native plants (stand 6).

CEQA Threshold

We do not believe our proposal for this property will create a significant impact on grasslands. The County CEQA thresholds of significant work in concert with the State CEQA guidelines to protect fragile, rare, and special environmental resources. CEQA appendix G speaks of a project normally having a significant effect on the environment if it will "substantially affect a rare or endangered species of animal, plant, or the habitat of the species, interfere substantially with the movement of any resident or migratory fish or wildlife species; and substantially diminish habitat for fish, wildlife or plants". None of those impacts occur from this project.

The local guidelines go into the need to assess a variety of issues as to whether the habitat is designated as an ESH area on County planning documents or designated as "critical habitat" for listed species by Federal or State agencies . The answer to those two questions for this property is *no*.

Is the habitat pristine or disturbed (disturbed). Is the habitat resource large enough to be viable (No).

The guidelines list six manners in which, if the disturbance to the habitat causes a substantial impact, then it can be considered significant if there is substantial evidence to support that (emphasis on *substantial* in the original).

In describing less than significant impacts, the guidelines state "there are many areas in the County where there is little or no importance given to a habitat and it is presumed that disruption would not create a significant impact. Examples of areas where impacts to habitat are presumed to be insignificant include: (a) acreages of non native grassland if wildlife values are low". This property is predominantly non native grass, mowed closely for fire control, with demonstrated wildlife values.

The guidelines state that "removal or severe disturbance to a patch or patches of native grasses less than ¼ acre which is clearly isolated and is not a part of a significant native grassland or an integral component of a larger ecosystem, is usually considered insignificant."

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grasses it is not the case with purple needle grass which still exists in abundance in California.

Goleta Community Plan

The Goleta Community Plan created an urban boundary line within which it anticipated there would be future development including housing. Many recent State "smart growth" initiatives and policies look to urban infill housing where homes are created near jobs as the primary planning tool to reduce carbon emissions caused by long term commuting.

The County adopted overriding considerations in the Community Plan where some environmental impacts were considered, on balance, to be allowed to occur to allow infill housing.

Attached are copies of Goleta Community Plan Biology sections.

The project complies with BIO-GV-21 by using locally occurring native plants to be re-vegetated in landscaping in parks and open space.

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BIO-GV-22.3 states the County should develop a fee program to mitigate impacts with projects with the potential to significantly impact any of the regional ecological systems. The County has traditionally accepted in lieu fees for biological restoration including payments of up to $3,000 per parcel to fund other agencies or non-profits. This demonstrates the County is accepting of other forms of mitigation of potential impacts.

According to studies, the main factor on the long term survival of purple needle grass is watering[1]. Without systematic watering a drought puts at risk the survival of purple needle grass. Clearly the resource will be enhanced by consolidating it and watering and having the home owners association responsible for maintaining it.

The County is prohibited from applying "any development standard that will have the effect of precluding the construction of a development meeting the (affordability requirements) at the densities or with the concessions or incentives permitted by section 65915.

"Development Standards" are broadly defined to include any zoning ordinance, general plan, specific plan, or other local law. The County is limited in applying rules or policies if those land use regulations would preclude the development of the project and utilization of the bonus density and other incentives.

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Delaying process is taking a planning action which has the purpose and intent to thwart or prevent a bonus density project from being realized.

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passive parkland with these new residents is consistent with that County goal of creating additional park areas be they public or private.

The County has a record of delaying or thwarting infill housing including infill housing that includes low and moderate housing. This project includes a very low income rental per the bonus density provisions. The County staff person (A. Almy) said these fragmented grasses are potentially significant because there used to be many more of them in the area and these represent a small remnant of a prior larger stand. That is imposing a burden on this property for actions on other property in past times that is legally unwarranted.

The property owners could disk the property and remove all these grasses if they determined them to be an unreasonable and unnecessary burden. The County requires the property owner to cut these grasses low for fire protection in which state they serve no different purpose biologically than any other non-native grasses.

If the County believes that there is from our bonus density incentive request a "specific adverse impact" on public health and safety, the physical environment or historic property for which there is "no feasible method to satisfactorily mitigate or avoid the specific adverse impact", it should provide such findings so we can assess them.

Historically a wide range of options have existed to mitigate potentially significant impacts on common plantable landscape grasses that fit in the category of native grasses.

The County previously deemed these grasses isolated and fragmented. They are no less isolated or fragmented now though the edges of some stands have widened.

Conclusion

This property was approved for development in 2007 with a purple needle grass re-vegetation plan. Many jurisdictions are addressing new permitting for undeveloped previously approved projects because of the change in the economy. The County staff is using a strained interpretation to say development of the site could have a significant impact on the isolated pockets of purple needle grass on the site.

State law provisions have been adopted to assist infill housing projects that include affordable housing to overcome local planning obstacles. We have invoked an incentive to avoid onsite restoration that would impede utility and function of the project anymore than the 1.6 acres of denser purple needle grass we are proposing. There is no question that post project there will be more purple needle grass plants with a more sustainable environment than before.

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property. Removing that would make the onsite total 2.26 acres. That is almost exactly the size of lot 19 (2.2 acres) that will have restoration on it with approximately .6 of that in the bottom of the bowl that would use other native but managed grass for periodic recreational use. That shows that the onsite acreage of mitigation nearly balances as is without even considering an offsite option. This is clearly a resolvable issue and not one meriting project delays.

If the County denies this incentive we are entitled to go to court and obtain relief and attorneys fees. Unnecessary process delays are indeed local governmental actions that have the effect of precluding the construction of a development of a bonus density project at the densities and with the concessions or incentives permitted by government code 65915.[3]

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JEFFREY C. NELSON

Phone (805) 845-7710
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October 11, 2012

Glenn Russell
Director
Planning and Development
123 E Anapamu St
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Maria
Via Los Padres
Pennell Rd
San Antonio Creek
Via Gennita
Via Rubi
Via Orquidia
Via Los Santos
Paseo Los Santos
San Antonio Creek Ln
NOT A PART
APN 059-290-040
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT 10
LOT 11
LOT 12
LOT 13
LOT 14
LOT 15
LOT 16
LOT 17
Schools
0
350
700
Feet
N
One Inch = 350'
Date of Aerial : August 2008

4700 Via Los Santos Area Properties

LOT 18

PENNELL RD. (PRIVATE)

NOT A PART
APN 059-290-040

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

LOT 14

LOT 15

LOT 16

LOT 17

(E) Vegetation

Lawn, (Typ.)

Patio, (Typ.)

Sidewalk

Bioswale

Lawn, (Typ.)

Patio, (Typ.)

Pool, (Typ.)

Gazebo, (Typ.)

Street Trees, (Typ.)

Permeable Pavers, (Typ.)

Low Sandstone Wall, (Typ.)

Low Sandstone Wall, (Typ.)

Site Entrance

Site Entrance

SAN ANTONIO CREEK RD.

SAN ANTONIO CREEK RD.

VIA LOS SANTOS

LOT DATA

Lot	Acre	Elevation
1	0.95	373
2	0.64	357
3	0.33	357
4	0.62	356
5	0.77	347
6	0.75	350
7	0.61	345
8	0.58	340
9	0.59	340
10	1.07	340
11	0.97	341
12	0.60	340
13	0.64	339
14	0.70	339
15	1.09	340
16	0.75	347

Entry Concept

DAVID R. BLACK & ASSOCIATES
LANDSCAPE ARCHITECTURE URBAN DESIGN
1714 PANPAS AVENUE SANTA BARBARA, CALIFORNIA 93101 (805) 898-8707 FAX 898-8573

ILLUSTRATIVE SITE PLAN

PARK HILL ESTATES V.2 October 12, 2011

For the Oak Creek Co.

1"=40'-0"

0 40 80 120

N W E S

March 28, 2012

Board of Supervisors
Santa Barbara County
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: Park Hill Estates v2

Dear Supervisors:

In 1970, my father, Mr. Louis Zeluck, together with his partners, purchased this 14.87 parcel at Via Los Santos. He envisioned a project along the lines of what Mr. Jeff Nelson and Oak Creek Company have designed and that is before you today. The fact that it has taken 42 years to arrive at the point we are today is a testament to patience, endurance, and confidence that this property is best suited developed into private, luxury class homes, and not remain as perpetual open space. My father never lived to see his plans realized, but the reins have been taken now by Oak Creek Company, and they have designed an energy-efficient, highly attractive 16 home development that I am very sure my father would have been enthusiastic about and which would have met with his endorsement.

As my mother, Mrs. Charlotte Zeluck both understood and intended, the development of Park Hill Estates v2 is a matter of considerable importance both for me and my immediate and extended family, as our future economic security is tied inextricably with its success. Estate and personal debts cannot be satisfied, medical internships cannot be paid for, retirements cannot be planned for or enjoyed until this project is approved and the land sold.

I am not certain what future opportunities I will have to voice my points, so I felt it was necessary to explain my perspective at length here. I would have wished to be at the Planning Commission hearing of January 25th, to defend the land and the excellent project that Mr. Nelson and Oak Creek Company have designed, but I had fallen ill about two weeks before the hearing and have just recently recovered my health.

I will make an effort to be present whenever Park Hill Estates is on the agenda, time and finances permitting. Since I believe the Commissioners construed my absence at the January 25th hearing as a lack of interest or concern, please understand that my inability to attend any hearing concerning Park Hill Estates is due to work commitments or health issues which require that I must stay in San Francisco.

In the course of this letter I will explain my concerns that efforts are being made by the adjoining property owners, both publicly and privately, to delay this well planned project to failure, a fear that I have been forced to acknowledge in light of what occurred at the January 25th hearing. I ask that the Planning Commissioners' "no decision" be set aside and I will provide justification to do so in the course of this letter.

This project deserved approval on January 25th and deserves approval now. Commissioners Brown, Cooney and Valencia approved a 12 unit project on this site in 2007. Unfortunately the real estate crash occurred soon thereafter and the property did not sell at that time. The difference today is that native grasses have grown on the property, for which an excellent mitigation plan has been arranged at UCSB, and there are four more homes planned for.

To further extend the vetting process is **unnecessary, wasteful and counter-productive**, given the years of effort, hundreds of man-hours, and considerable expense that have gone into this project by the Department of Planning and Development in cooperation and coordination with Mr. Jeff Nelson. P&D has concluded that this land and this project are appropriate as a mitigated negative declaration. In my respectful opinion,

the Commissioner's hearing of January 25th was not a forum that could have resulted in anything approaching fairness.[1]

It certainly appears the Santa Barbara County Department of Planning and Development's planning process was adhered to very closely in the creation of both the draft MND and the Proposed Final Mitigated Negative Declaration, and no stage in process review was skipped or rushed through, and every aspect was the subject of intense scrutiny and analysis. I closely followed the Santa Barbara County Department of Planning and Development's online progress entries throughout the two and a half years of research that this project was under study, and which eventually culminated in the classification of the project as an MND.

Park Hill Estates, an infill development, is subject to P & D's 80 page Mitigated Negative Declaration document, as well as subject to the Board of Architectural Review's high standards.

In the course of my research on infill development in the Greater Santa Barbara area to give me some background on the salient points, I have discovered that future infill development is promoted in many diverse growth plans. And I would believe that most real environmentalists will agree that infill development is strongly preferred to further development of agricultural lands and outlying undeveloped areas.

On the topic of infill I quote from a number of those plans here:

"The plan proposes that firm urban-rural boundaries be established which will have the effect of redirecting growth from an outward expansion to infilling. In this sense, the plan will result in more compact urban development, thereby assuring the long-term protection of surrounding agricultural lands and recreational resources." "To prevent further urban encroachment onto agricultural lands and encourage infilling within urban areas, urban/rural boundaries are delineated on the land use plan maps for the Carpinteria Valley, Summerland, and Goleta planning areas." - Santa Barbara County Coastal Use Land Plan, (June 2009), page 19

"Goal: Housing development is limited to infill projects and non-contiguous (leap frog) development is discouraged." - A Comprehensive Vision for the Eastern Goleta Valley" prepared by the Goleta Vision Committee, (June 2006), page 17

"The Plan prioritizes neighborhood development in strategic locations near commercial and employment destinations, schools, parks, and multi-modal transportation facilities. These locations direct development patterns to infill development in urban areas while preserving the function, forms, and characteristics of existing suburban neighborhoods and rural lands. Based on the community's goals for sustainability, these patterns are preferred over continuing suburban sprawl into the rural, agricultural and coastal lands of Eastern Goleta Valley." - Eastern Goleta Valley Community Plan, Residential Land Uses, (February 1, 2012), Page 41

"Urbanization: In order for the County to sustain a healthy economy in the urbanized areas and to allow for growth within its resources and within its ability to pay for necessary services, the County shall encourage infill, prevent scattered urban development, and encourage a balance between housing and jobs." - Santa Barbara County Conservation Element, (republished August 2010), page 67

"Residential development in the foothills to date has been substantially below the buildout projections used in the GCP EIR. The development of 16 residential units on the 14.87-acre project site is generally

[1] The neighbors were permitted to engage in unrestrained fear-mongering (including the screening of a home made 'scare' video), haranguing and threats; I observed that certain of the Commissioners asked leading questions of experts, appeared at times to become befuddled and forgetful, allowed themselves to pander to constituents' demands, and reversed conclusions due to peer pressure.

consistent with the buildout projections for the area based on the current zoning (1-E-1) and parcel size, as it would result in just over one more unit than would otherwise be allowed under base density and zoning. As such, the cumulative analysis contained in the GCP EIR is applicable to the proposed project." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 49

"…the site is zoned and designated for residential development and is surrounded by residential development which is indicative of its status as an infill development site. An approved subdivision on this property from 2007 reflects the fact that this site is intended for residential development. Additionally, the visual resources present on-site resulting from the current lack of development are not unique to the site as other pockets of similar visual characteristics exist elsewhere in the community. These include several properties east of San Antonio Creek Road in between the project site and Highway 154 which are currently vacant and/or contain significant open, vegetated spaces. In addition, while less visible, the 12-acre open space parcel located within the La Romana Subdivision north of the project site also contains valuable scenic visual resources available to the public. Further, the large undeveloped properties zoned Agriculture and Mountainous north of the project site serve as a critical visual backdrop to the neighborhood, contributing to the open and scenic character of the area." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 11

Egress in times of emergency was an issue that was spoken of regarding Park Hill Estates, and it's an important issue, agreed. The draft MND and the proposed final MND both hone in on egress in times of emergency:

"In the event of an emergency evacuation, the addition of up to 36 vehicles (assuming two vehicles per residence) utilizing the roadways would not be expected to significantly alter the existing evacuation capacities of the area roadways given the multiple alternatives for evacuating and the fact that 36 vehicles would represent a small fraction of the surrounding community's vehicle use." - Mitigated Negative Declaration, (June 17, 2011), page 44

"Two new private roads connecting with Via Los Santos and San Antonio Creek Road would accomplish site ingress/egress. The existing road system leading to the project site is operating below its capacity at an acceptable LOS and the increased traffic generated by both project construction and by resident ADTs would not significantly impact the traffic volumes. The new access road entering from the south would merge with the new east-west oriented access road that ends in a cul-de-sac. Emergency access to the project site would occur by the existing roadways and the newly constructed access roads and would meet County Fire Department standards. The addition of 160 ADTs and 16 PHTs would not significantly diminish the capacity of area roadways in an emergency evacuation scenario." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 66

"The increase in population resulting from residential development of the proposed parcels would not create the need for any additional increase in fire fighting resources for the area. The site is within the five-minute Fire Department response time. Although firefighting resources need not be expanded, the Fire Department requires new fire hydrants be installed to serve the residential development. The hydrants must flow at 750 gallons per minute at a 20-psi residual pressure, the standard Fire Department requirement for residential development. It is the Fire Department's understanding that the water pressure and GPM flow capabilities of the existing water infrastructure can meet the Fire Department's requirements for fire protection (Glenn Fidler, Santa Barbara County Fire Department, personal communication, April 15, 2011)." - Mitigated Negative Declaration, (June 17, 2011), page 44:

And here is further comment on egress from the draft MND and the Proposed Final Mitigated Negative Declaration:

"The proposed roads providing access into the project site have been designed to meet County Fire Department standards. These un-gated roadways are essentially a loop road connecting Via Los Santos and San Antonio Creek Road. The roadway design would provide an additional means of evacuating vehicles from the larger project area. This might be especially helpful if it were necessary to evacuate the area when

there is also a large gathering at nearby B'nai B'rith or the Church of Christ, thereby increasing the number of vehicles needing to exit the area and access San Antonio Creek Road. - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 48

"Impacts are considered less than significant due to the multiple means of access into and out of the site, including for emergency evacuation purposes, and due to the fact that water pressure and flow are expected to be adequate to meet minimum hydrant requirements." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 48

"The Goleta Community Plan EIR concluded that cumulative fire impacts associated with foothill build out are considered significant and unavoidable (Class I) due to constraints associated with providing adequate fire protection for continued foothill development. However, the Board's certification of 91-EIR-13 included a Statement of Overriding Considerations that resulted in adoption of fire protection polices and development standards for the Goleta Community Plan (GCP). Under this proposal, the project would be consistent with the GCP policies and standards in providing two routes of emergency access, all existing and new roads would meet Fire Department criteria, and adequate water flows and pressure for fire protection would be available. As such, the project's contribution to these significant cumulative impacts would be mitigated and would not be cumulatively considerable." - Mitigated Negative Declaration (June 17, 2011), page 45:

Supervisor Wolf, Mr. Nelson informed me that Mr. Danny Vickers, current president of the San Antonio Creek Homeowner's association and the individual who is leading the opposition to Park Hill Estates v2, said that he had witnessed flames 200 ft high as the tinder dry grass ignited in one incident on the property. I am not an expert on fire safety, granted, but I do have common sense, and common sense tells me that fire safe homes instead of the open grassland that currently exists will pose a greatly reduced fire risk to the neighborhood, a factor which is obviously in the best interest of the adjoining property owners including Mr. Vickers (although Mr. Vickers is reportedly selling his home and moving to a newly built home). Homes with interior sprinkler systems, fire extinguishers, and much else to combat ignition, do not ignite easily as does an open dry field.[2]

Planners learned many things from the Painted Cave fire, and that knowledge was applied to upgrade fire safety codes so that a reoccurrence would be unlikely. For example, I know from firsthand experience that shake roofs were disallowed and landscaping requirements changed because of lessons learned from the Painted Cave fire. I have just recently learned that the Santa Barbara City Fire Department offers free voluntary inspections to property owners, which according to the News-Press "are designed to ensure homes are defensible during a wildfire." (Editorial of Terry Tyler, March 19, 2012)

I ask what will be accomplished by further analysis of fire issues if the expert who understands the area in terms of fire fighting requirements better than any other person stated without qualification that Park Hill Estates v2 is in strict compliance with existing fire code? The Fire Marshal explained very clearly and without equivocation that Park Hill Estates v2 complies with current fire codes - even without the Tuckers' road egress route. [Mr. Nelson informs me that Commissioner Cecelia Brown said essentially this when voting to approve Park Hill Estates v1 in 2007].

To say that there was a considerable analysis of plant biology by Ms. Mooney, the County's biologist, would be quite an understatement. There has been an abundant analysis of the plant biology at Park Hill Estates when one reads through the Proposed Final Mitigated Negative Declaration, to a point where once again common sense strongly suggests further analysis to be redundant and a waste of County resources.

Mr. Magney, the biologist the neighbors hired to throw the County biologist's research and conclusions in a negative light, appeared uninformed, pedantic, and hairsplitting. His most serious charge was that Ms.

2 The Oak Creek Company, in addition to the one existing fire hydrant along Pennell Road now, will install four new fire hydrants in connection with the new water lines throughout the project.

Mooney, the County biologist, did not use the right methods in analyzing the plants varieties on site. A response to Mr. Magney's charge is to be found in the final MND, which I quote here:

"A comment letter submitted on the Draft MND suggested that the methods used in the biological resources section in assessing the vegetation on-site were not adequate, that sampling plot sizes may not have been appropriate, and that random sampling was not used. The methods used in the characterization of vegetation in the MND (Rapid Assessment methodology in combination with the Watershed Environmental line transect methods) are more intensive than many other recent P&D grassland analyses due, in part, to advances in vegetation science in recent years. While these methods are not as scientifically rigorous as those for academic research projects, the surveying and sampling conducted for this project was wholly consistent with all other grassland analyses performed for other projects reviewed by P&D and is sufficient for the purposes of CEQA. In addition, it is important to note that Rapid Assessment sampling is by its very nature a plotless technique (i.e., there is no set size for plots), and it is frequently used in grassland classification (see Sawyer, Keeler-Wolf and Evens, 2009). It is agreed that more intensive academic level sampling would be desirable, but this cannot always be accomplished efficiently; nor is it necessarily an appropriate level of analysis for CEQA review. In this analysis, one combined Rapid Assessment/Releve plot was recorded (Plot AG-1). Its size was 30 x 30 ft. (900 sq.ft.), a size typically used for grassland analysis. Lastly, while random sampling is a standard technique for most studies, it is rarely appropriate for vegetation mapping and analysis because vegetation is not randomly distributed. It is generally associated with soils, slopes, and many other variables that one must take in to account when placing study plots within a stand (personal communication, Todd Keeler-Wolf, March 29, 2010)." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 32

From the biological researches at the property has evolved a very strong grassland mitigation agreement between Mr. Nelson and the UCSB Department for Biodiversity and Ecological Restoration, which make it possible to study, preserve and grow large stands of native grasslands at the University and under the auspices of CCBER:

The comment of Planning on this subject is as follows:

"…the applicant has proposed to incorporate an off-site element that includes collaboration with UCSB Cheadle Center for Biodiversity and Ecological Restoration (CCBER) on restoring the 3.07 acres of impacts at a 2:1 ratio on a 6-acre area on the Ellwood/Deveraux open space adjacent to Coal Oil Point Reserve." -Mitigated Negative Declaration (June 17, 2011), Page 32

"This draft plan would be revised pursuant to Mitigation BIO-Sp2 below, and impacts to purple needle grass native grasslands would be reduced to less than significant. Off-site mitigation is considered to be a viable option in this case for the following reasons: (1) there is a minimum of 500-600 ft. of existing development surrounding the project site separating it from the adjacent natural habitats of San Antonio Creek and Maria Ygnacio Creek; (2) onsite avoidance and/or restoration options would result in isolated, low-functioning grassland areas; and (3) feasible off-site restoration has been proposed."- Mitigated Negative Declaration, (June 17, 2011), page 32

That on campus CCBER is enthusiastic in welcoming the Park Hill Estates v2 grassland mitigation plan on University land comes as no surprise to me. For more information about this please contact Lisa Stratton, Director of Ecosystem Management, Cheadle Center for Biodiversity and Restoration, stratton@ccber.ucsb.edu, 893-4158. I am an alumnus of UCSB, College of Creative Studies (1973), and that this enhanced mitigation plan would wind up benefitting UCSB is very personally gratifying, since the University is a school with a high level of academic achievement in a unique setting, both of which I enjoyed for two years.

The neighbors reported seeing raptors and other birds nesting at the site. P&D's response to this:

"Public testimony on the Draft MND suggested that the site was used by various raptors and other bird species. However, no evidence of nesting or roosting by raptors or sensitive bird species was apparent

during the most recent site surveys conducted by the County staff biologist, which occurred during the nesting season (April 2011). Furthermore, there are few trees on the site that would provide suitable habitat for nesting or roosting. Trees that are present in the project are along the property boundaries, and as such, are already disturbed by existing residential development and uses." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 36

"Bio-Sp3 Raptor, Special Status Species, and Nesting Bird Protection. To avoid disturbance of nesting and special status birds including raptorial species protected by the Federal Migratory Bird Treaty Act and Sections 3503, 3503.5, and 3513 of the California Fish and Game Code, proposed project activities, including, but not limited to, vegetation removal, ground disturbance, and construction shall occur outside of the bird breeding season (February 1 through August 15). If these activities must begin within the breeding season, then pre-construction surveys shall be conducted. The nesting bird pre-construction survey shall be conducted within the disturbance footprint and a 500-foot buffer as allowable without trespassing on private lands. The survey shall be conducted by a County-qualified biologist familiar with the identification of raptors and special status species known to occur in Santa Barbara County using typical methods. If nests are found, a buffer ranging in size from 25 to 500 feet depending upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, shall be determined and demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. No ground disturbing activities shall occur within this buffer until the County-qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting birds surveys are not required for construction activities occurring between August 16 and February 1." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 40

The Proposed Final Mitigated Negative Declaration addresses view concerns that have been raised by the neighbors:

"Neighbors living along Pennell Road have expressed concern about existing line of sight problems when leaving and returning to their homes. Public Works has confirmed that the line of sight at the Pennell Road/San Antonio Creek Road intersection is not optimum. The proposed removal of the pepper trees along the Park Hill Estates San Antonio Creek Road frontage will improve this situation for sight distance to the southwest. The other line of sight constraint is located off-site and is associated with vegetation along San Antonio Creek Road further to the northeast. The project is not proposing Pennell Road access and, therefore, would not contribute to line of sight traffic safety hazards at this intersection." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 66

The neighbors stated that they are worried about reduced privacy. I can't see how they can make an effective case about loss of privacy, not with 16 units on 14.87 acres. There is plenty of privacy in Park Highlands, and these homes are planned to be on lots close to an acre. How can that not be private? Mr. Nelson does not wish his project to encroach on anyone's privacy or their views, and so he has designed it to not do that.

The neighbors complained about the current dangers to both pedestrians and motorists along San Antonio Creek Road. Park Hill Estates' design calls for the removal of pepper trees that currently block lines of sight, installation of additional street lighting, and the creation of a pedestrian walkway along that part of road (as discussed in the MND) As a person who has both walked and driven that stretch of San Antonio Creek Road many times and can attest to its dangers in its current state, I feel certain that these planned changes will improve both vehicular and pedestrian safety.

The neighbors complained about the affordable unit. Their fears regarding a single affordable unit are not grounded in reality. Nearly all new projects now require a certain percentage of affordable units. The percentage of the affordable homes to total homes in Park Hill Estates 1/16th, and that is a minimally low ratio of affordable to market rate homes, to my knowledge. Mr. Nelson has relocated the affordable unit on

site to accommodate the neighbors' concerns. A well-managed, affordable rental unit will certainly attract high quality tenants.[3]

At both the environmental hearing of July 2011 and the Commissioners' hearing of January 2012 the neighbors' were upset that there was more construction planned for the area. At both hearings they lamented the loss of open space. Yet as far as open space is concerned there is plenty of open space in the area that is preserved in perpetuity. There is a lovely park in Tucker's Grove, just down the hill. And there are many other large open space and recreational areas within a short drive from Park Highlands.

One can find solitude and whisper quiet serenity, fishing, camping and scenic opportunities in abundance nearby, whether one travels in a northerly, southerly, easterly or westerly direction from the project site.[4]

Throughout the Final Proposed Mitigation Declaration it can be seen how extensively the neighbors' concerns are considered by P&D as well as the Oak Creek Company, and how completely measures have been set forth in the Proposed Final Mitigated Negative Declaration to satisfy their concerns.

In closing, I read with interest Nora K. Wallace's interview with Supervisor Gray in the News-Press on March 15, 2012. In it Supervisor Gray talked about the lack of County funds for basic services. In this regard I would like to quote a passage from an article entitled "The Importance of New Home Building to the United States Economy" published in the New Homes Section, (November 16, 2010), by N. Jayson. It reads as follows:

"The recent economic downturn was one more glaring example of how important new homes and home building are to the United States economy, both directly and indirectly. The housing market includes the building, selling, and resale of residential homes. But in the same way an earthquake in Japan causes a tsunami in Hawaii, the ripple effects of a housing boom—or bust—have far reaching economic ramifications because the housing markets drive so many auxiliary industries."

"New homes, which are considered durable goods, have to be furnished with everything from appliances, light bulbs, and consumer electronics to textiles, paint, and gardening supplies. Goods that are part and parcel of new housing generate state and local sales taxes. Appliances, furniture, building materials and electronics provide a large amount of revenue from sales taxes. So when the housing market goes down, retail sales decline, sales tax revenue shrinks, and local communities and states have less money for services."

"During a real estate market decline, property taxes are also impacted, although on a delayed schedule. The amount property owner's pay in taxes is a percentage of the home's appraised value; as house values goes down, the amount of money homeowners pay in taxes decrease. A bust like the current one, can and has devastated local economies nationwide."

"More houses mean more families in the community which is good for local restaurants, shops, movie theaters and so on. So not only is there a direct economic benefit from new housing, there is an ongoing indirect benefit which is why new home construction is used as an indicator of the country's overall economic health. As the recent recession showed, a housing bust can significantly impact financial markets too. As people default on their loans, the values of the houses decrease, which reduces the value of

[3] I speak here from personal experience as having been a tenant in a rent controlled (affordable) apartment for the past 22 years. As I am, there are also many other high quality tenants who seek affordable rentals, and who are both reliable and appreciative of the opportunity to live in a lovely property in safe and scenic surroundings.

[4] America's Byways' San Marcos Pass Road Overview states: "The San Marcos Pass Road, Route 154, gracefully works its way from near the dreamy Santa Barbara Coastline, over the Santa Ynez Mountains, and on to Highway 101, 35 miles inland. The route takes the traveler through parts of the Los Padres National Forest, past beautiful Lake Cachuma, and on to colorful, historic valley towns. It is a gently curving two-lane highway that passes through four separate scenic environments."

the banks' mortgage portfolio. When that happens, banks tighten their loan parameters, making it harder for individuals and small businesses to get loans."

"The above reasons are why an increase in new construction is considered the first sign of a recovery. It is the engine that drives the financial train. More new homes typically mean more new jobs, not just in construction but in related industries too. As unemployment goes down, consumer confidence increases, which leads to more consumer spending. As business improves companies hire more workers, leading to more economic growth, higher incomes, and more disposable cash. New construction can signal the beginning of a positive spiral of prosperity."

Supervisor Wolf, what is applicable in general for the country is also applicable in particular to Eastern Goleta Valley, in my respectful opinion. If the prior paragraphs are true – and they most certainly would appear to be -- then the Park Hill Estates v2 at 4700 Via Los Santos in Goleta will contribute to improving overall economic growth and prosperity in both Goleta and in Santa Barbara County generally.

Santa Barbara County Department of Planning and Development's conclusion regarding 16 home Park Hill Estates v2 is as follows:

> "There are no components of the project that would cause substantial adverse effects on human beings as all impacts of the project could be feasibly mitigated. Lastly, there is no disagreement supported by facts over the significance of an effect which would warrant preparation of an EIR for this project." - Proposed Final Mitigated Negative Declaration, (October 14, 2011), page 78

I have written to you here on my own behalf as part-owner of Park Hill Estates and not at the request of or on behalf of any other person or organization. I hope that resolution of any issues concerning Park Hill Estates v2 will be speedily resolved and so allow approval of this excellent project to occur without further delay. I respectfully ask that in 2012 there will be a resolution to this matter after 42 years of ownership, so that the ongoing stress and anxiety associated with this land and project, and the dire health and financial consequences of continual delay, can finally reach a conclusion. After having been informed by P&D that a May 1st date was set for the hearing, I booked my Santa Barbara travel plans accordingly. I respectfully ask that the May 1st hearing date be reinstated so that I may be able to attend the hearing.

Thank you.

Yours Sincerely,

Steve Zeluck

Steven Courtney Zeluck

(415) 312-2634 (mobile)
2750 Sutter Street, #8,
San Francisco, California

cc: Mrs. Doreen Farr, Chair, Santa Barbara County Board of Supervisors
Mr. Salud Carbajal, Vice-Chair, Santa Barbara County Board of Supervisors
Mrs. Joni Gray, Santa Barbara County Board of Supervisors
Mr. Steve Lavagnino, Santa Barbara County Board of Supervisors
Dr. Glen Russell, Director, Santa Barbara County Planning & Development
Mr. Jeffrey C. Nelson, Founder, Oak Creek Company

Section 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

Section 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

The Permit Streamlining Act includes time limit provisions for taking action on a project after the environmental determination is made. When an EIR is certified for a project, the public agency shall approve or deny the project within ***180 days*** from the date of certification. When a project is found to be exempt from CEQA or a negative declaration is adopted for a project, the public agency shall approve or deny the project within ***60 days*** from the date of the determination or adoption (§65950 and Public Resources Code §21151.5). If no action is taken within the allotted time, the project may be deemed approved by action of the Act.

An application can only be deemed approved as a result of failure to act if the requirements for public notice and review have been satisfied (§65965). Two options are available to an applicant to ensure that these requirements are met (§65956(a) and §65956(b)): (a) the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure (civil mandamus) to force the agency to provide notice or hold a hearing, or both; (b) if the applicant has provided ***seven (7) days*** advance notice to the permitting agency of intent to provide public notice, an applicant may provide public notice using the distribution information provided pursuant to §65941.5 no earlier than ***60 days*** from the expiration of the time limits. The notice must include the required contents as provided for by §65956(b) and a statement that the project will be deemed approved if the permitting agency has not acted within ***60 days***. Notice by the applicant extends the time limit for action by the permitting agency to 60 days after the public notice is sent out.

Subdivision Map Approvals with a Negative Declaration

If a development project that requires a negative declaration involves a tentative subdivision map, SMA (Govt C §§66410 et seq.) comes into play, and special rules apply.

Most city and county governments have a planning commission (or body with a similar title) to which the city council or board of supervisors delegates certain land use authority. Within 50 days after adoption of the negative declaration or a determination that the project is exempt from CEQA, one of three actions must be taken by the planning commission.

If it has the delegated authority to approve tentative subdivision maps (which is usually the case), it must approve, disapprove, or conditionally approve the map within the 50-day period. Govt C §§65952.1, 66452.1(b).

But if the planning commission has been delegated only the authority to make recommendations regarding the approval of tentative subdivision maps, it must recommend approval, disapproval, or conditional approval of the map within 50 days after adoption of the negative declaration or a determination that the project is exempt from CEQA. Govt C §§65952.1, 66452.1(a). **Then, at its next regular meeting following receipt of the planning commission's recommendation, the city council or board of supervisors must fix a date in which to approve, disapprove, or conditionally approve the map. That date must be within 30 days of the receipt of the planning commission's report. Govt C §66452.2(a).**

It is not clear whether the time limits governing tentative subdivision map approvals for which a negative declaration is required (or which are exempt from CEQA) may be extended for 90 days with the applicant's consent. *Compare,* Govt C §§65952.1(a), 65957.

Timelines for Responsible Agencies

The timelines discussed above assume that the agency involved is the "lead agency" and principally responsible for carrying out or approving the project. Pub Res C §21067; Govt C §65929. Different rules apply if the agency is a "responsible agency," which is any agency other than the lead agency that is responsible for carrying out or approving the project. Pub Res C §21069; Govt C §65933.

Responsible agencies are required to approve or disapprove a development project that has been approved by the lead agency within 180 days from the later of: (1) the date on which the lead agency approved the project, or (2) the date on which the application for the project is accepted as complete by the responsible agency. Govt C §65952.

———————————

Limits on Time Extensions

As noted above, a number of the PSA's time limits may be extended once for a period of up to 90 days on the mutual consent of the agency and the applicant. Govt C §65957. However, no extension, continuance, or waiver of PSA time limits is allowed beyond the one-time 90-day extension permitted under section 65957.

Summary of Neighbor Issues over time
Park Hill Estates v.2

Sept. 2010- Discussions of Density, Affordable, neighborhood concerns about new plan.
Oct. 2010- "The big concern is neighborhood compatibility." "Danny wisely said that we want to slow the process down".
Nov. 2010- "We have serious concerns with the new proposal because we do not believe that it is compatible with our neighborhood". 1,200 sf affordable unit not compatible with the neighborhood.
Feb. 2011- "Project not remotely compatible with our neighborhood". Hire first attorney
July 2011- Neighborhood contacted Planning Commissioner. Planning Commissioner says that Bonus Density Projects are not automatically approved, need to be CEQA compliant. Neighborhood not satisfied with 2 lot reduction and are not satisfied that the low income rental is still a part of the project.
Sept. 2011- Neighborhood will support no more than 14 units with no affordable unit. "The affordable unit will be a 1,200 SF home that rents for $900 per month. Jeff believes that he can write a very strict lease that will avoid a situation (e.g. multiple families living in a small space) that is unacceptable to the neighborhood." "The main concerns voiced by the neighborhood at the meeting were the number of lots, the affordable unit and the parking along the roadways. I was disappointed that we did not move the process further along last night."
April 2012- "Mr. Nelson's latest proposal does not provide us with much certainty on the fire safety or the affordable rental issues**.** The very low income affordable rental is still part of the plan."