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October 12, 2012

Ms. Doreen Farr, Chair
Santa Barbara County Board of Supervisors
Santa Barbara County
123 E Anapamu St.
Santa Barbara Ca, 93101

Re: Park Hill Estates Project, Appeal No. 12APL-00000-00015

Dear Chair Farr and Honorable Members of the Board of Supervisors:

I thank you in advance for the opportunity to comment on the above referenced project. My name is Frank Arredondo. I am Chumash/Coastanoan. I am recognized within my community as the Former Director of the Board with the Coastal Band of the Chumash Nation. Currently, I am an active member of the Coastal Band of the Chumash Nation, I am listed on the Most Likely Descendant (MLD) list for the Chumash Territory and the Native American Contact list with the Native American Heritage Commission. I am also listed on the Santa Barbara County approved consultants list as a Native American consultant. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in the project. I currently provide comment on several Planning and Development projects in the surrounding areas that have cultural resources impacts. I have been an advocate for the preservation of those Cultural Resources within my community and for several years now as well as placing an emphasis on local governments adhering to policies and procedures. I thank you for taking the time to review my comments.

The Park Hill Estates Project, referred to herein as the proposed project; The Project may not be approved under a Negative Declaration, as there is substantial evidence that the impacts to Cultural resources have not met the statutory requirements for formal review and analysis of a project. An EIR must be prepared to comply with CEQA.

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I request that the Board of Supervisors uphold the appeal, find that there is substantial evidence supporting a fair argument of significant adverse environmental impacts, and direct the preparation of an EIR and take no action on the merits of the project until such time as the EIR is prepared and certified. While the absence of evidence in the record on cultural resources is relied on as the basis for the FMND, it does not excuse the agencies' failure to gather relevant data, or to follow its own policies for evaluation. Incomplete and inadequate efforts to locate and identify cultural resources on a site typically result in discovering nothing and improperly concluding the absence of resources. The failure is found in the Initial Study & Site Evaluation as I will point out below.

CEQA and Archaeological Resources CEQA Technical Advice Series rev 1994

The California Environmental Quality Act (CEQA) establishes statutory requirements for the formal review and analysis of projects. The CEQA Guidelines have been adopted by the State to guide public agencies in implementing CEQA. CEQA's requirements for addressing impacts on archaeological resources are discussed in detail under Sections 21083.2 and 21084.1

Sections 21083.2 and 21084.1 operate independently to ensure that potential effects on archaeological resources are considered as part of a project's environmental analysis. The latter applies to archaeological sites which are listed on or eligible for listing on the California Register; the former applies to other "unique" archaeological resources. Either of these benchmarks may indicate that a proposal may have a potential significant adverse effect on archaeological resources.

Initial Study

An initial study must be prepared for projects which are not exempt from CEQA in order to guide the decision whether to prepare either a Negative Declaration or EIR (Guidelines Section 15063). The original determination whether to prepare a Negative Declaration or an EIR is subject to the "fair argument" test (Laurel Heights Improvement Assoc. v. U.C. Regents (1993) 47 Cal.3d 376). In other words, if a fair argument can be raised on the basis of "substantial evidence" in the record that the project may have a significant adverse environmental impact, in this case that unique archaeological resources or archaeological sites that are historical resources would be affected, then an EIR is required even if evidence also exists to the contrary. Section 21083.2 explicitly requires that the initial study examine whether the project may have a significant adverse effect on "unique archaeological resources."

Pursuant to Part (g) of that section, a unique archaeological resource is: "an archaeological artifact, object, or site, about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria: "(1) Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information. "(2) Has a special and particular quality such as being the oldest of its type

or the best available example of its type. “(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.” [Emphasis added]

Site Evaluation

The effectiveness of the initial study depends largely upon an accurate evaluation of the site’s potential archaeological significance. This means determining whether there is present a unique archaeological resource (Section 21083.2) or a historical resource that is an archaeological resource (Section 21084.1).

The “unique” criterion established by Section 21083.1 is narrower and more restrictive than general, professionally accepted criteria by which the significance of an archaeological site would be evaluated.

Establishing that a site is or is not “unique” may involve **extensive research, analysis, field testing, and excavation**. In practice, ascertaining that a significant archaeological site is not unique and therefore not subject to CEQA may involve **more research, analysis, and testing** than would be necessary if the resource were a significant historical resource and mitigated. This is particularly true when avoidance is a feasible alternative.

A record search to determine whether any previously identified resources exist on site is **the first step** in determining whether there may be archaeological resources present. Often, when the applicant submits environmental information with their project the Lead Agency requires that this include the results of a record search at the applicable California Historical Resources File System Information Center (formerly the Archaeological Information Centers). These 11 regional centers maintain the State Archaeological Inventory as part of the Historical Resources File System. This system maintains current information on recorded archaeological sites, as well as resources listed on the California Register of Historic Resources. Alternatively, the Lead Agency itself may undertake this record search during the initial study phase of project review.

Additional sources of information on the possible presence and value of archaeological resources are colleges and universities with archaeology departments, the local historical or archaeological society, **local Native American groups**, or **appropriate archives** and repositories. Also, the Native American Heritage Commission maintains a file of **Sacred Lands** which contain information unavailable elsewhere. (CEQA and Archaeological Resources CEQA Technical Advice Series rev. 1994)

The Lack of Research and Analysis

There is no indication in the Final MND that accurate evaluation of the site's potential for archaeological significance has taken place. The only item used to substantiate the sites potential to impact cultural resources is a 25 year old surface survey and test pits adjacent to the Bedrock Mortar located on the property. Numerous items to base this evaluation are missing.

1. There is no current record search of the California Historical Resources File System Information Center identified in the FMND of ever taking place. This is a specific requirement of the Santa Barbara County Cultural Resource guidelines 4.0 Report Requirements, 4.1 Phase 1 Archaeological Reports f.
2. No additional sources of information on the possible presence and value of archaeological resources from colleges or universities with archaeology departments, or the local historical or archaeological society, local Native American groups, or appropriate archives and repositories has ever taken place or presented in the FMND.
3. The FMND does not identify if the Native American Heritage Commission has been contacted for a request for a Sacred Lands File search. What's alarming is that Human remains have been recorded on this property (E-2087, CA-SBa-1551, Loren,S 1997) and yet not even mentioned in the FMND. According to CEQA Guidelines 15064.5, Determining the Significance of Impacts to Archeological and Historical Resources (d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code section 5097.98. This is not documented in the FMND to have taken place.

What is missing specifically from the Cultural Resource section that would support adequate review would include information about the Sites and Surveys within the local vicinity of the project site. The identification of a Bed Rock Mortar along with human remains found between two creek beds within short walking distance between each increases the potential of additional Cultural Resources potentially located in the subsurface. Bedrock Mortars are frequently associated with inland Chumash sites as part of the material culture and food processing of acorns.

SITES

A total of sixteen (16) sites are located within this projects direct vicinity.

Three (3) sites surround this project location within a ¼ mile, CA-SBa- 3491, CA-SBa-1206, CA-SBa-1582, none of which are mentioned in the FMND.

Thirteen (13) Sites are located with in a ½ mile radius of the project location. Not mentioned in the FMND.

To the North East, Seven sites: CA-SBa-2150, CA-SBa-2340, CA-SBa-2338, CA-SBa-2339, CA-SBa-169, CA-SBa-41, CA-SBa-1704. One of which maintains burials. Not mentioned in the FMND.

To the North West two sites: CA-SBa-1820, CA-SBa-1855. Not mentioned in the FMND.

To the South West three sites: CA-SBa-1554, CA-SBa-1553, CA-SBa-1547. Not mentioned in the FMND.

To the South one site: CA-SBa-1582. Not mentioned in the FMND.

PREVIOUS SURVEYS

Two (2) additional surveys were conducted within this ½ mile radius of the project location.(E-1066 & E-3414, CCIC). Not mentioned in the FMND.

According to the :

Guidelines for the Implantation of the
California Environmental Quality Act of 1970,
as amended.

Adopted by the Board of Supervisors County of Santa Barbara (Revised 11/22/05)

ARTICLE VI- NEGATIVE DECLARATIONS G. Determination by Decision Maker that the ND is Inadequate – If, upon review of the project, the decision maker determines that the ND is inadequate, the project shall be referred to the lead department for appropriate revisions or preparation of an EIR. Consideration of the project shall be deferred until the ND is approved or an EIR is certified, consistent with mandatory time lines for action.

In Conclusion,

With so many report requirements missing from the Site Evaluation section of Cultural Resources in this FMND, it is hard to justify that the process used to carry out the Site Evaluation is adequate to make any determination. A study conducted over 25 years ago is called into question, the lack of site record search is missing, the lack of Identification of numerous sites within the area, 16! , the Human remains located on the property and non participation of the Native American community, which is required by Public Resources code section 5098.98. All add up to an inadequate FMND.

A fair argument of environmental impacts must be based on substantial evidence, but the amount of evidence required to support the fair argument is much lower when the initial study is so completely flawed and missing so many variables that should be addressed for the FMND to provide adequate environmental determinations for approval. (Sundstrom v. Co. of Mendocino (1988) 202 Cal. App. 3d 296).

For several years, I have worked to see that the County review process is carried out in a uniform way. At the very least I have generally found the regulations that are at work for Cultural Resources are followed usually, but in this case very basic steps for evaluation have been omitted and as a result, important cultural resources ignored.

An EIR must be prepared to comply with CEQA.

I thank you for allowing me to comment.

*Best wishes, Frank Arredondo
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Ref :

- County of Santa Barbara Environmental Thresholds and Guidelines Manual Rev 2006
- County of Santa Barbara Resource Management Department Regulations Governing Archaeological and Historical Projects Undertaken in Conformance with The California Environment Quality Act and related laws: Cultural Resources Guidelines Rev 1993.
- Guidelines for the Implementation of the California Environmental Quality Act of 1970, as Amended rev 2005
- CEQA and Archaeological Resources CEQA Technical Advice Series rev 1994

CC:

Native American Heritage Commission – David Singleton
Santa Ynez and Of Mission Indians –Sam Cohen, Freddie Romero
Michelle C. Messinger State Historian II - CEQA Coordinator Office of Historic Preservation

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