



**PLANNING & DEVELOPMENT  
APPEAL FORM**

SITE ADDRESS: 4700 Via De Los Santos

ASSESSOR PARCEL NUMBER: 059-290-041

PARCEL SIZE (acres/sq.ft.): Gross 14.87 acres Net 14.71

COMPREHENSIVE/COASTAL PLAN DESIGNATION: Residential 1.0 ZONING: 1-E-1

Are there previous permits/applications? no yes numbers: 06TRM-00000-00001  
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? no yes numbers: 06NGD-00000-00028

1. **Appellant:** Channel Islands Chapter of the California Native Plant Society and San Antonio Creek HOA

Phone: See contact information for Marc Chytilo, Attorney for Appellants, below FAX: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

2. **Owner:** Jeff Nelson, The Oak Creek Company Phone: (805) 845-7710 FAX: (805) 845-7712

Mailing Address: 735 State St., Santa Barbara, CA 93101 E-mail: Jeff@JeffNelsonLaw.com  
Street City State Zip

3. **Agent:** \_\_\_\_\_ Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

4. **Attorney:** Marc Chytilo, Law Office of Marc Chytilo Phone: (805) 682-0585 FAX: (805) 682-2379

Mailing Address: P.O. Box 92233 S.B. CA 93190 E-mail: marc@lomcsb.com  
Street City State Zip

**COUNTY USE ONLY**

Case Number: \_\_\_\_\_ Companion Case Number: \_\_\_\_\_

Supervisorial District: \_\_\_\_\_ Submittal Date: \_\_\_\_\_

Applicable Zoning Ordinance: \_\_\_\_\_ Receipt Number: \_\_\_\_\_

Project Planner: \_\_\_\_\_ Accepted for Processing \_\_\_\_\_

Zoning Designation: \_\_\_\_\_ Comp. Plan Designation \_\_\_\_\_

# COUNTY OF SANTA BARBARA APPEAL TO THE :

BOARD OF SUPERVISORS

PLANNING COMMISSION:  COUNTY  MONTECITO

RE: Project Title Park Hill Estates v.2

Case No. 10TRM-00000-00001

Date of Action September 5, 2012

I hereby appeal the  approval  approval w/conditions  denial of the:

Board of Architectural Review – Which Board? \_\_\_\_\_

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County Planning Commission

Planning & Development Director decision

Zoning Administrator decision

### Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

The Channel Islands Chapter of the California Native Plant Society and the San Antonio Creek Homeowners Association (collectively “Appellants”) are aggrieved parties in this matter. Members of Appellant groups and their representatives appeared at public hearings including the September 5, 2012 approval hearing, and raised concerns regarding the adequacy of the Mitigated Negative Declaration and project approval on topics including native grassland preservation, emergency evacuation, wildlife habitat, aesthetics, and community character, among other things.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

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SEE ATTACHED LETTER

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**Specific conditions imposed which I wish to appeal are (if applicable):**

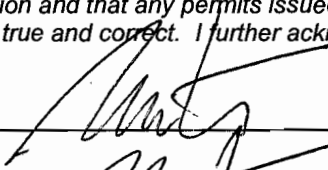
- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

**Please include any other information you feel is relevant to this application.**

**CERTIFICATION OF ACCURACY AND COMPLETENESS** Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

**Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.**

*I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.*

Marc Chytalo  9/17/12

Print name and sign - Firm Marc Chytalo  9/17/12 Date

Print name and sign - Preparer of this form \_\_\_\_\_ Date

Print name and sign - Applicant \_\_\_\_\_ Date

Print name and sign - Agent \_\_\_\_\_ Date

Print name and sign - Landowner \_\_\_\_\_ Date

# LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

September 17, 2012

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

*By hand delivery and by email to  
[sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)*

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

Dear Chair Farr and Members of the Board,

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

## **1. An EIR Is Required for the Project**

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

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

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

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

## 2. The MND Is Legally Flawed

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

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

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

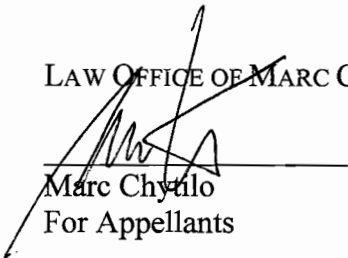
Many of the Planning Commission’s CEQA Findings are not supported by substantial evidence in the record, including findings that certain impacts are insignificant, that mitigation measures are adequate and enhanced mitigation is infeasible. The CEQA finding required to approve a negative declaration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

### **4. Conclusion**

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

Sincerely,

LAW OFFICE OF MARC CHYTILO

  
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Marc Chytilo  
For Appellants