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25 January 2012

Santa Barbara Planning Commission
Santa Barbara County Planning & Development
105 E. Anapamu Street
Santa Barbara, CA 93101

**Subject: Park Hill Estates Proposed Final MND v.2 (10TRM-00000-00001)**

Dear Chairman and Commissioners:

I am David Magney, owner of David Magney Environmental Consulting based in Ojai, California. I have been retained by San Antonio Creek Homeowners Association to review the CEQA and related documents associated with the Park Hill Estates development. A detailed comment letter was submitted to the County last Friday and should be in your packet.

## Qualifications

I have been conducting biological surveys and studies since late 1970s, and serving as an environmental consultant fulltime since 1986. I am an approved biologist for Santa Barbara, Ventura, and Los Angeles Counties, and serve on the Los Angeles County Environmental Review Board for projects in the Santa Monica Mountains. I am a Certified Arborist through the International Society of Arboriculture. I have prepared biological resources Initial Studies for Ventura County Planning Division since 1995. I have worked on hundreds of CEQA reviews, focusing on biological resources, including the preparation of the EIR for the former Bridle Ridge project less than a mile to the east of the Park Hill Estates project site. I hold, and have held, several leadership positions with the California Native Plant Society, and have actively helped develop botanical survey methods and protocols that are now standards for CNPS, the California Department of Fish and Game, and U.S. Fish and Wildlife Service. I have a Bachelor's degree in Environmental Studies and Geography with emphasis in botany, cartography, biogeography, and remote sensing from UCSB. Through CNPS, the California Botanical Society, Northern California Botanists, Southern California Botanists, and others, I have been spearheading the project to develop a certification program for professional botanists in California. I am the contract biologist for the City of Rancho Palos Verdes, since 2005, where I review all biological resources reports for adequacy pursuant to CEQA and the City's General Plan policies.

## Evaluation of Project Site Resources

The Santa Barbara County Environmental Thresholds Guidelines Manual, on Page 36, states that a **resource inventory must be conducted** [emphasis added] to determine if the site supports resident species or migratory species and whether any special-status species are present. It also requires a determination of site resource condition and quality, and how biologically productive it is, and what is its viability.

No systematic surveys of the project site have ever been conducted to establish and published survey protocols for vascular plants or wildlife species present onsite. A botanical inventory was conducted in March of 1998, and supplemented with observations during surveys focused on mapping vegetation during April 2011, August and October 2010. Wildlife surveys were only conducted for vertebrate species in late fall/early winter 1998. No surveys were ever conducted for nonvascular plants or invertebrates.

The criteria used to determine habitat condition/quality were not provided; and claims are made, at least indirectly, that grassland habitats not dominated by native species have little value, and are not considered valuable or important habitat. No criteria have been provided as to how the biologists that have assessed the Park Hill Estates project site determined the significance of the grasslands onsite not dominated by native plant species.

CEQA requires that substantial evidence be provided to support conclusions about the biological resources present at a project site and how a proposed project would directly or indirectly impact the biological resources. Below are quotes from the Governor's Office of Planning and Research, CEQA Technical Advice Series: Mitigated Negative Declarations (OPR 2012[1]) that are relevant to the Park Hill Estates project:

> "CEQA requires that the Lead Agency, through its initial study, review the whole of a project….The decision to prepare a mitigated Negative Declaration (and a Negative Declaration for that matter) must be grounded in an objective, good faith effort on the part of the Lead Agency to review the project's potential for significant impacts (*Sundstrom v. County of Mendocino*, supra).
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> "The original determination made on the basis of the initial study whether to prepare either a Negative Declaration or an EIR is subject to the "fair argument" test (*Laurel Heights Improvement Assoc. v. U.C. Regents* (1993) 47 Cal.4th 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 - even if evidence also exists to the contrary - then an EIR is required. A Negative Declaration is authorized when the Lead Agency determines that no substantial evidence exists supporting a fair argument of significant effect. A mitigated Negative Declaration applies when changes to the project or other mitigation measures are imposed which such that all potentially significant effects are avoided or reduced to a level of insignificance.
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> "SB 919 adds to CEQA a definition of the term "substantial evidence" (subdivision (e), Section 21080). Although this does not affect application of the fair argument standard, it provides the Lead Agency a means by which to gauge the quality of evidence discovered during its review of a project. Similarly, a court examining the actions of the Lead Agency now has a consistent standard by which to judge the quality of the evidence which was before the Agency.
>
> "Pursuant to Section 21080, substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." It does not include "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment." Further, public controversy over the possible environmental effects of a project is not sufficient reason to require an EIR "if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment" (Section 21082.2).
>
> "There are two prerequisites to using a mitigated Negative Declaration:
>
> 1. All potentially significant effects of the project can and will be avoided or mitigated to a level of insignificance by project revisions or other requirements imposed on the project. A mitigated Negative Declaration is based on the premise that the project will not result in a significant effect. For example, suppose a project would increase traffic from Level of Service (LOS) B to LOS D where local guidelines have identified LOS D as the threshold for significance. If mitigation can reduce the impact to LOS C, then the project's impact would not be considered significant.

[1] State of California, Governor's Office of Planning and Research (OPR), CEQA Technical Advice Series: Mitigated Negative Declarations (http://ceres.ca.gov/ceqa/more/tas/mit_neg_dec/neg_decs.html)

2. The project changes and mitigation measures must be agreed to or made by the proponent before the draft Negative Declaration is circulated for public review and comment. In other words, the draft document must reflect the revised project, with changes and mitigation measures. A few agencies apparently require proponents to submit a new project description before the draft mitigated Negative Declaration is released. This procedure is not required by CEQA if the proponent has otherwise agreed to or made the revisions and mitigations. However, requiring or allowing an applicant to adopt prospective mitigation measures which [sic] are to be recommended in a future study, but which are not incorporated into the project before the proposed Negative Declaration is released for public review, is not [emphasis added] allowed (*Sundstrom v. County of Mendocino,* supra).

"A key question for the Lead Agency is: What level of mitigation or project revision is sufficient to avoid or eliminate a potential significant effect? There is no ironclad answer which [sic] would apply in every instance. The answer depends upon the specific situation; the Lead Agency must use its own independent and objective judgment, based on the information before it, to determine that "clearly no significant effect on the environment would occur" (Section 21064.5). Further, there must be evidence in the record as a whole to support that conclusion.

"Pursuant to Section 15370 of the CEQA Guidelines, mitigation includes:

"(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

"(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

"(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

"(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

"(e) Compensating for the impact by replacing or providing substitute resources or environments."

"Project revisions may include such things as changes in design, location, operations, or scope. Effective project revisions will perform any or all of the above functions (a) through (e).

"Effective mitigation measures are those written in clear, declaratory language specifying what is required to be done, how it is to be done, when it is to be done, and who will be responsible for doing it. The words "will" and "shall" are preferred to "may" and "should" when directing an action. Furthermore, measures must be feasible to undertake and complete. Avoid measures that are conditional upon feasibility (i.e., required only "when feasible"), rather than applied directly or at a specified project stage. Also avoid deferred mitigation and mitigation measures consisting of monitoring and future studies not tied to performance standards and contingency plans (*Sundstrom v. County of Mendocino,* supra).

"Upon adopting a mitigated Negative Declaration, the Lead Agency must make both of the following findings:

1. Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur.
2. There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.
(Sections 21064.5 and 21080(c))."

The paragraphs below will provide substantial evidence that the County has failed to adequately document what biological resources are present, how the project will impact those resources, and how it has not evaluated all components of the project as required by CEQA when using a MND.

**Botanical Survey and Methods**

Botanical survey protocols were not followed. The project Mitigated Negative Declaration (MND) states that the protocols were "largely" followed without any explanation as to what parts of the protocols were or not followed. "Largely" doesn't cut it. The survey protocols were established for a reason, and need to be followed in their entirety. Biologists don't get to pick-and-choose which parts we want to follow for whatever reason. Any deviation from the protocols needs to be identified and explained, and what the ramifications are of the failure to fully comply with them. None of that was done.

The "primary" botanical survey of the project site was performed in March of 1998, almost 14 years ago now. Additional surveys have been conducted onsite since then, but focusing only on mapping and characterizing the vegetation onsite, not surveying for special-status species, and then those surveys were mostly conducted during the summer. No surveys have ever been conducted during the winter, mid- or late-spring, or early summer when many plant species are identifiable but not so during March or August. Watershed Environmental (1999[1]) supports this on Page 9 of their report,

> "It should also be understood that one site visit to record taxa will only give a snapshot in time of species present. Additional surveys performed later in the season would likely result in finding additional taxa as late-developing plants emerge and flower".

Since the 1998 botanical survey, the list of plants considered rare in California (as compiled by the California Native Plant Society) has been updated in print once and at least annually electronically since. Furthermore, surveys for whole groups of plants were not considered. The failure to follow the botanical survey protocols and the age of the botanical surveys leaves the assessment of the botanical resources inadequate to satisfy CEQA assessment requirements.

**Nonvascular Plants (bryophytes and lichens)**

Nonvascular plants, which include bryophytes and lichens, are part of the botanical resources; however, they were not considered at all for this project. There is no evidence that surveys for mosses, liverworts, hornworts, or lichens were ever conducted. Numerous species are indeed present, some of which may be rare; however, they have been ignored. A total of 59 lichen species have been identified as occurring on similar habitat at the former Bridle Ridge project site just east of SR154, some of which are rare in Santa Barbara County. The MND is inadequate until these resources have been surveyed and assessed, as described in my previous letters.

**Wildlife**

The only focused surveys for wildlife were conducted by VJS Biological back in 1998, focusing on vertebrate wildlife species. There is no mention whatsoever about invertebrate wildlife surveys or species, a broad group of wildlife that contains magnitudes more species than represented by vertebrates, and make up the biggest part of wildlife biodiversity onsite. One specific group of wildlife that I have been researching over the last 8 years are the terrestrial gastropods (snails). We have a great diversity of native gastropods in California, including Santa Barbara County, which as at least eight (8) are known from the mainland part of the county, with two species endemic to Santa Barbara County. Another two are formally tracked by the California Natural Diversity Database and considered rare. No surveys for terrestrial gastropods, much less

[1] Watershed Environmental. 1999. Botanical Inventory/Native Grassland Survey, 4700 Via Los Santos Road (APN 59-290-041), Santa Barbara, California. March 1999. Santa Barbara, California. Prepared for County of Santa Barbara, Planning and Development Department, Santa Barbara, California.

for any other invertebrate species, were ever conducted for this project even though suitable habitat is present. This oversight must be corrected.

The fact that several raptor species use the project site for foraging and roosting, without deference to habitats dominated by native plant species, is evidence that all the grassland types onsite are of at least equal value or importance to those species. No evidence has been provided to suggest that the raptors that use the site differentiate between the grassland habitat types, using them equally.

Without evidence to the contrary, if the County considers foraging habitat important to raptors using the site, it must consider the loss of all of the grassland types onsite as a significant impact and require full mitigation for the loss of them if an MND is to be used.

**Grassland Habitat Characterization**

The grasslands onsite have yet to be accurately characterized. Most of the 14.87-acre site is dominated by herbaceous vegetation generally referred to as grassland. The County has long focused on those grasslands in Santa Barbara County dominated by the native perennial bunchgrass, Purple Needlegrass. I formally described this plant community in a scientific journal, *Crossossoma*, in 1992. Grasslands of all types are of critical concern in California because, like wetlands, we have already lost well over 95% of them, and they are critical habitat to many species of plants and wildlife, such as the White-tailed Kite, to name just one species. The developer's consultant and the County continues to mischaracterize the grasslands onsite as of low ecological value because they contain many non-native grasses and forbs.

Transects, plots, and relevé data have been sampled onsite, with a good summary provided in Table 2 on Page 29-30 of the MND; however, that sampling has failed to follow basic scientific methods to obtain meaningful results. Frankly, the work has not met minimum scientific standards in several respects, which I detailed in my previous letters to the County. Statistically valid sampling has never been conducted onsite; however, the County has made conclusions on that sampling, resulting in erroneous statements and conclusions about the grasslands present onsite.

The grasslands have been mischaracterized and the functions performed by the grassland habitat onsite have been ignored or greatly minimized in a biased manner. The primary reason scientists follow protocols is to remove or minimize the bias of the scientists performing the sampling and assessments. Watershed Environmental and the County violated the rules, which are intended to minimize unintentional bias. Watershed Environmental sampled 73 quadrats along five (5) transects. None of the sampling followed statistically valid protocols. Therefore, the results are suspect at best, and invalid at worst. Certainly, they cannot be used to make unbiased conclusions about what is present at the project site.

**Vegetation Mapping**

The vegetation sampling is a necessary part of the mapping of the resources. Boundaries are drawn, which are arbitrary decisions unless those boundaries are determined by rigorous sampling, to demark one type from another. A fair amount of data were collected by Watershed Environmental and the County Biologist, albeit not necessarily at the appropriate times of the year; however, those plots, transects, and relevé plot areas have not been delineated on any map, or at least not on any made available to the public for review. Without knowing where sampling occurred (except for Watershed Environmental's 1998 work), precisely, it is impossible for the public to compare or check the accuracy of what sampling was performed or how those data were converted to a map.

The sampling is a valuable tool to help the mapper decide where to draw the line between mapping units. Without the sampling data, the maps presented are simply biased presentations of what the person perceives to be present. The fact that the County biologist disagreed with the boundaries of Purple Needlegrass Grassland, as mapped by Watershed Environmental, illustrates the biases of both. Without detailed, statistically valid sampling to support the boundaries, another biologist, like myself, would almost certainly have different boundaries, based on my own biases. To summarize my main point on this issue, you can't have accurate mapping without clearly defined criteria, and those criteria, for grasslands, must be supported by on-the-ground sampling that would survive statistical tests. Otherwise, the resulting maps are sampling biased opinions and are not substantial evidence as required by CEQA.

**General Plan Policies and Environmental Thresholds**

The County has adopted several policies as part of its General Plan to protect biological resources. I want to talk about two polices here: Bio-GV-1 and DevStd BIO-GV-22.2.

**Policy Bio-GV-1** requires the County to provide protection to important or sensitive environmental resources and habitats. Evidence has been provided that the grassland (including rock outcrops) vegetation onsite are considered a sensitive environmental resource, because of the habitat it provides to wildlife and plants, and do to their scarcity. The County has narrowly focused their assessment on grasslands dominated by Purple Needlegrass without the benefit of unbiased data that are statistically valid. Even those areas onsite dominated by nonnative herbaceous species provide most of the functions all grasslands provide; however, they have been entirely discounted as important by the County because of a bias against the nonnative species (a bias I share). However, that bias is misapplied in the case of habitat function.

All the grassland areas of the project site, regardless of which species are dominant, provide valuable and important foraging habitat for a whole sweet of raptor and migratory bird species, as well as other vertebrate and invertebrate species. This fact in itself is reason enough to consider all the grassland habitats onsite to be considered a sensitive environmental habitat, warranting protection onsite.

**Policy DevStd BIO-GV-22.2** requires any offsite mitigation site be given "a permanent protective easement". The impacts to a portion of the grasslands impacted is proposed to be mitigated on property owned by the University of California. Has the University stated that it is willing to accept a conservation easement on their property? Not likely.

**Goleta Community Plan BIO-GV-1.1 (5)** on page 193 states, "Areas that are structurally important in protecting natural landforms and species…".

**Santa Barbara County Environmental Thresholds D.3.(2).a.** states that "a native grassland is defined as an area where native grassland species comprise 10 percent or more of the total relative cover". Footnote 5 associated with that definition states,

> "Native grasslands which [sic] are dominated by perennial bunch grasses such as purple needlegrass (*Stipa pulchra*) tend to be patchy (the individual plants and groups of plants tend 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".

Environmental Thresholds **Mitigation Hierarchy** states that Avoidance of the impact should be primary, followed by onsite mitigation, and lastly, offsite mitigation.

**Mitigation Proposed**

The applicant is proposing to mitigate for all impacts to sensitive grassland habitat offsite, on property owned by the University of California. First, the amount to be mitigated is too low, in that most, if not all the grasslands onsite should be treated as sensitive habitat, requiring mitigation. Even if you only require mitigation for the amount stated, the West Campus Bluffs site already contains native habitat with development to on two sides, with the ocean to the south, and is no more defensible then preserving habitat onsite. Second, the soils on the two sites are quite different, with the project site consisting of stony sandy loam and the West Campus Bluffs site primarily containing clay soils. Microclimates of the two sites are also quite different, and the County or the developer's consultants have never conducted any sort of analysis of site suitability or defensibility. The geomorphic landforms of the two sites are quite different. Furthermore, the offsite mitigation plan has not been made available to the public for review. There are many unanswered questions about this. Based on the information I have gathered, I do not believe that the West Campus Bluffs site is appropriate for mitigating impacts to grassland habitats found at the project site, certainly not to a level of less than significant.

Furthermore, the West Campus Bluffs site in currently in a "natural" condition and used by raptors for foraging. The West Campus Bluffs cannot be used as a mitigation site for the loss of foraging raptors because it is already "at capacity". That is, foraging raptors already use the site, and there is not room for the raptors currently foraging at the Park Hill Estates site to move to the West Campus Bluffs site. The loss of foraging habitat is left unmitigated, with is not permitted when using an MND. An EIR is the only vehicle available to allow such impacts to go unmitigated.

I disagree with Mr. Nelson's belief that onsite preservation is not preferred. It is preferred, and it is feasible. Reconfiguration of the parcels can significantly reduce onsite impacts and reduce mitigation requirements. The retention basin represents an excellent opportunity for onsite mitigation if designed properly and if it was not allowed to be used for active recreation.

The bioswales proposed also offer opportunities for habitat restoration, or at least for providing habitat for a number of wildlife species that currently use the property, if designed properly.

**Mitigation Preserve Design**

The design of any mitigation site or habitat preservation site must take into account a number of factors, such as: viability, maintenance, defensibility, and influence from surrounding area (edge effect). These are all influence by the purpose of the preserve, which must be the overriding consideration. The use of island biogeography theory has been used to argue for or against large versus small preserve designs (Higgs 1981[1]). Issue of concern depend on the objectives of the preserve. Single site preserves, regardless of their size, are at risk from stochastic events. Smaller, scattered sites reduce that risk. For maintaining a population of a particular species is dependent on the requirements of that species.

**All Project Components Must Be Evaluated**

CEQA requires that all components and sites associated with a project must be assessed as part of the CEQA review process, particularly when using a MND. The offsite mitigation site, West Campus Bluffs, has never been assessed or evaluated. No biological surveys have been conducted of the mitigation site. The feasibility or appropriateness of the site has never been formally assessed. As stated above, I believe

[1] Higgs, A.J. 1981. Island Biogeography Theory and Nature Reserve Design. *Journal of Biogeography* 8:117-124.

that some aspects of the West Campus Bluffs site make it inappropriate as a mitigation site for establishing native grassland habitat. This also applies to the use of the site as mitigation for foraging raptors.

In closing, as you can see there are many problems with the documentation for this project, and what this project, as proposed, will do on the environment. Many biological resources have not been adequately surveyed, if at all, assessed, if at all, nor have feasible or appropriate mitigation been proposed. The site contains very important grassland habitat that needs to be protected onsite, but first we really need to know, truly, what is present before any actual decisions about what to do here are made.

In addition, the use of a MND is inappropriate when all sites associated with the project are not evaluated, and when all impact to significant biological resources are not fully mitigated. An EIR should be prepared for this project.

Sincerely,

David L. Magney
President

cc: Danny Vickers, San Antonio Creek Association
Greg Suba, California Native Plant Society