



MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: JOEL ROJAS,  AICP, DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT

DATE: SEPTEMBER 15, 2009

SUBJECT: PLANNING CASE NO. ZON2009-00007 (CODE AMENDMENT AND ENVIRONMENTAL ASSESSMENT): REVISIONS TO THE LANDSLIDE MORATORIUM ORDINANCE (CHAPTER 15.20 OF THE RANCHO PALOS VERDES MUNICIPAL CODE) TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW FOR THE FUTURE DEVELOPMENT OF THE SIXTEEN (16) MONKS PLAINTIFFS' UNDEVELOPED LOTS IN ZONE 2

REVIEWED: CAROLYN LEHR, CITY MANAGER 

Project Manager: Kit Fox, AICP, Associate Planner 

RECOMMENDATION

- 1) Adopt Resolution No. 2009-___, certifying the Mitigated Negative Declaration and Mitigation Monitoring Program; and,
- 2) Adopt Ordinance No. 498, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow for the future development of the sixteen (16) *Monks* plaintiffs' lots in Zone 2.

EXECUTIVE SUMMARY

On September 1, 2009, the City Council received public testimony on the draft Mitigated Negative Declaration (MND) and introduced Ordinance No. 498, as amended, to revise the City's Landslide Moratorium Ordinance to establish an exception category to allow for the future development of the sixteen (16) *Monks* plaintiffs' lots in Zone 2. The 30-day public comment period for the MND ended on September 9, 2009. Staff has prepared a brief response to the written comments received at or since September 1, 2009, along with a

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draft Resolution to certify the MND and associated Mitigation Monitoring Program (MMP) and the final version of Ordinance No. 498 for the City Council's consideration and adoption at tonight's meeting.

BACKGROUND

On September 1, 2009, the City Council considered the draft MND and revised Code Amendment to establish a Landslide Moratorium Exception category to allow for the future development of the sixteen (16) undeveloped lots owned by the *Monks* plaintiffs in Zone 2. Based upon written and oral comments presented at that meeting, it was clear that there continued to be public opposition to creating an exception category that would not extend the "benefits" of the *Monks* decision to all forty-seven (47) undeveloped lots in Zone 2; and/or that would do so without the preparation of an Environmental Impact Report (EIR) rather than an MND. Nevertheless, consistent with the City Council's direction to pursue a "two-track" parallel process, whereby a Code Amendment addressing only the sixteen (16) *Monks* plaintiffs' lots would be prepared with a revised MND, and a similar amendment addressing all forty-seven (47) undeveloped lots in Zone 2 would be prepared with an EIR, the City Council introduced Ordinance No. 498 with an amendment to insert a specific reference to the *Monks* case in the Code language. Staff has revised draft Ordinance No. 498 accordingly, and has also prepared a draft Resolution certifying the MND/MMP. Staff has also compiled a brief response to comments on the MND that were submitted on or after September 1, 2009, but before the end of the 30-day public comment period on September 9, 2009.

DISCUSSION

Revised Proposed Ordinance

Based upon the City Council's direction, Staff has slightly revised the language of the proposed Landslide Moratorium Exception Category 'P' (additions underlined, deletions struck-out):

The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office, identified as "Monks belonging to the plaintiffs' lots" in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office in the case "Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263, 84 Cal. Rptr. 3d 75 (Cal. App. 2 Dist., 2008)"; provided, that a landslide moratorium exception permit is approved by the Director, and provided that the project

complies with the criteria set forth in Section 15.20.050 of this Chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this Code are satisfied, and the parcel is served by a sanitary sewer system. Prior to the issuance of a landslide moratorium exception permit, the applicant shall submit to the Director any geological or geotechnical studies reasonably required by the City to demonstrate to the satisfaction of the City geotechnical staff that the proposed project will not aggravate the existing situation.

Otherwise, the language of Ordinance No. 498 remains as originally proposed by Staff on September 1, 2009.

CEQA Compliance

The 30-day public comment period for the MND ended on September 9, 2009. In the previous Staff report of September 1, 2009, Staff responded to written comments on the MND that were attached to that report. The following are Staff's responses to Late Correspondence presented to the City Council on September 1, 2009, and any other comments received on or before the end of the 30-day comment period.

- Yogesh Goradia: Mr. Goradia owns an undeveloped lot in Zone 2 but is not a *Monks* plaintiff. Mr. Goradia argues that it is "only reasonable to assume that the court intended the [*Monks*] decision to apply to the [entirety of] Zone 2." Staff would argue, however, that it can only be stated with certainty that the *Monks* decision applied to the *Monks* plaintiffs' lots and that it was the City's obligation to remedy the taking of those lots. He suggests that the moratorium should be lifted on all forty-seven (47) undeveloped lots in Zone 2, and this may be the outcome of the parallel EIR process that is underway, as per the City Council's direction of June 2, 2009.

- Jeremy Davies: Mr. Davies requests an EIR rather than an MND; suggests that the lots covered by the MND will not be analyzed in the forthcoming EIR for all of Zone 2; suggests that the potential for subdivision of larger lots should be analyzed in the EIR; and questions the assumptions used to determine that the existing Abalone Cove Sewer System can accommodate the development of the *Monks* plaintiffs' lots. The forthcoming Zone 2 EIR will include the *Monks* plaintiffs' lots. At this time, the City has no plans to repeal or revise the separate moratorium restrictions (Rancho Palos Verdes Municipal Code Section 15.20.020) that prevent subdivision, but this issue may be analyzed in the future EIR. With respect to sewer capacity, the Public Works Department has stated that the system was designed and constructed to accommodate the future development of all of the forty-seven (47)

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undeveloped lots in Zone 2, as documented in the EIR that was prepared for that project.

- William Hunter: Mr. Hunter requests the preparation of an EIR for all of Zone 2, identifying concerns about impacts on private roads, hydrology, emergency access and the necessary geological and geotechnical assumptions for safe development in Zone 2. Given the very limited scope of the current proposal for sixteen (16) lots, Staff believes that the proposed MND is adequate. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis. Furthermore, the issues that Mr. Hunter raises will be analyzed in detail in the forthcoming EIR for the entirety of Zone 2.
- Marianne Hunter: Mrs. Hunter suggests that the lots covered by the MND will not be analyzed in the forthcoming EIR for all of Zone 2. She reiterates the concerns of Mr. Hunter with respect to impacts on private roads, hydrology, emergency access and the necessary geological and geotechnical assumptions for safe development in Zone 2. She also questions the assumptions about the capacity of the Abalone Cove Sewer system. The forthcoming Zone 2 EIR will include the *Monks* plaintiffs' lots. Given the very limited scope of the current proposal for sixteen (16) lots, Staff believes that the proposed MND is adequate. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis. Furthermore, the issues that Mrs. Hunter raises will be analyzed in detail in the forthcoming EIR for the entirety of Zone 2. With respect to sewer capacity, the Public Works Department has stated that the system was designed and constructed to accommodate the future development of all of the forty-seven (47) undeveloped lots in Zone 2, as documented in the EIR that was prepared for that project.
- Stuart Miller, Wellman & Warren LLP: Mr. Miller is one of the attorneys for the *Monks* plaintiffs. He requested permission to be heard toward the end of public comments at the meeting on September 1, 2009, a request that the City Council accommodated.
- Gordon Leon: Mr. Leon owns an undeveloped lot in Zone 2 (which abuts his developed lot in Zone 5) but is not a *Monks* plaintiff. He supports the formation of technical advisory panel to assess the entire moratorium area. He opposes the

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preparation of an MND for the *Monks* plaintiffs' lots, identifying concerns about impacts on private roads, hydrology, emergency access and the necessary geological and geotechnical assumptions for safe development in Zone 2. He also asserts that the MND underestimates future development potential in the surrounding the *Portuguese Bend* community. Given the very limited scope of the current proposal for sixteen (16) lots, Staff believes that the proposed MND is adequate. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis. Furthermore, the issues that Mr. Leon raises will be analyzed in detail in the forthcoming EIR for the entirety of Zone 2. Staff would also point out that, since the current proposal only covers the *Monks* plaintiffs' lots and would not affect the treatment of undeveloped lots anywhere else within the Landslide Moratorium Area, the future development potential of the proposed project is finite and determinable.

- * Martin Burton, Gilchrist & Rutter: Mr. Burton's law firm represents Dr. Lewis Enstedt, a Zone 2 resident, and the unincorporated "Portuguese Bend Alliance for Safety." Mr. Burton argues at some length that the City's current "two-track" approach (i.e., an MND for the sixteen (16) *Monks* plaintiffs' lots and a parallel EIR for all of the undeveloped lots in Zone 2) is an impermissible splitting of a project under CEQA. Staff respectfully disagrees in that the analysis in the forthcoming EIR will include the impacts of permitting the development of all forty-seven (47) undeveloped lots in Zone 2, including the *Monks* plaintiffs' lots. Staff presents this as a phased approach to respond to the *Monks* decision that attempts to balance the City's financial risk resulting from the taking of the *Monks* plaintiffs' lots (as determined by the Court of Appeals) against the risk of allowing future development on the other thirty-one (31) undeveloped lots in Zone 2. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis. Mr. Burton's letter raises a large number of potential environmental impacts that could arise from widespread development and redevelopment within and surrounding Zone 2. These are all issues to be addressed in the forthcoming EIR. However, Staff would point out that, since the current proposal only covers the *Monks* plaintiffs' lots and would not affect the treatment of undeveloped lots anywhere else within the Landslide Moratorium Area, the future development potential of the proposed project is finite and determinable.

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- Robert Bacon & Margaret Vaughn: Mr. Bacon and Ms. Vaughn question the justification for separating the *Monks* plaintiffs' lots from the rest of the undeveloped lots in Zone 2, and the potential liability to which this approach exposes the City. Staff presents this "two-track" approach (i.e., an MND for the sixteen (16) *Monks* plaintiffs' lots and a parallel EIR for all of the undeveloped lots in Zone 2) as a phased response to the *Monks* decision that attempts to balance the City's financial risk resulting from the taking of the *Monks* plaintiffs' lots (as determined by the Court of Appeals) against the risk of allowing future development on the other thirty-one (31) undeveloped lots in Zone 2. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis. Mr. Bacon and Ms. Vaughn also question the adequacy of the public notification for this matter. Public notice of this matter was given in accordance with the provisions of CEQA, and the 30-day public comment period was from August 10, 2009, through September 9, 2009. This is the reason that a decision on the MND was not rendered on September 1, 2009, but was deferred until tonight's meeting. All property owners within Zone 2 were provided with a written notice via U.S. Mail. In fact, the only notice returned by the Post Office as undeliverable was the notice addressed to Mr. Bacon and Ms. Vaughn. Upon further research, Staff found that the mailing address for their property in Zone 2 on file with the County Assessor—which is the basis for preparing the public notification list and mailing labels—was not the same address listed in their written comments on the MND.

- Robert Douglas: Dr. Douglas is the Chairman of the Board of Directors of the Abalone Cove Landslide Abatement District (ACLAD), whose territory encompasses Zone 2. Dr. Douglas asked for the scope of this analysis to be expanded to include all of Zones 2 and 3 and the upslope portions of Zone 1. He stated that the most important topics that the EIR for such an analysis should address are the stability of the ancient inactive landslide complex and the management of storm water runoff. Staff does not disagree that these would be important environmental impacts to consider in a project of such scope. However, given the very limited scope of the current proposal for sixteen (16) lots in Zone 2 only, Staff believes that the proposed MND is adequate. In addition, the proposed development of each of the sixteen (16) *Monks* plaintiffs' lots with a single-family residence would be reviewed for compliance with CEQA, and a determination made whether or not the categorical exemption for individual single-family residences (Section 15303(a) of the CEQA Guidelines) would be adequate and appropriate on a case-by-case basis.

CONCLUSION

In conclusion, Staff recommends that the City Council adopt Resolution No. 2009-__, thereby certifying the Mitigated Negative Declaration and Mitigation Monitoring Program; and adopt Ordinance No. 498, thereby revising the City's Landslide Moratorium Ordinance to establish an exception category to allow for the future development of the sixteen (16) *Monks* plaintiffs' undeveloped lots in Zone 2.

Attachments:

- Draft Resolution No. 2009-__ (including Mitigation Monitoring Program)
- Draft Ordinance No. 498
- Final Draft Mitigated Negative Declaration
- Additional public correspondence (received at or since September 1, 2009)

RESOLUTION NO. 2009-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CERTIFYING A MITIGATED NEGATIVE DECLARATION PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR PLANNING CASE NO. ZON2009-00007 (CODE AMENDMENT) FOR AMENDMENTS TO CHAPTER 15.20 (MORATORIUM ON LAND USE PERMITS) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW FOR THE FUTURE DEVELOPMENT OF THE SIXTEEN (16) MONKS PLAINTIFFS' UNDEVELOPED LOTS IN ZONE 2

WHEREAS, on December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*, so the City Council must consider the actions that are necessary to comply with the Court of Appeal's decision; and,

WHEREAS, on January 21, 2009, the City Council adopted Resolution No. 2009-06 repealing Resolution No. 2002-43, which had required property owners in Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots and was the purported catalyst for the filing of the *Monks* lawsuit; and,

WHEREAS, next action necessary to comply with the Court of Appeal's decision is to enact revisions to the current Moratorium Ordinance to allow the development of the *Monks* plaintiffs' sixteen (16) undeveloped lots in Zone 2; and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"), the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*, the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), the City of Rancho Palos Verdes prepared an Initial Study and determined that, by incorporating mitigation measures into the Negative Declaration, there is no substantial evidence that the approval of Planning Case No. ZON2009-00007 would result in a significant adverse effect on the environment. Accordingly, a Draft Mitigated Negative Declaration was prepared and circulated for public review for thirty (30) days between August 10, 2009 and September 9, 2009, and notice of that fact was given in the manner required by law; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the City Council conducted a public hearing on September 1, 2009, and September 15, 2009, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed revisions to Chapter 15.20 as set forth in the City Council Staff reports of those dates.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

Section 1: The City Council has independently reviewed and considered the proposed Mitigated Negative Declaration, the public comments upon it, and other evidence before the City Council prior to taking action on the proposed project and finds that the Mitigated Negative Declaration was prepared in the manner required by law and that there is no substantial evidence that, with appropriate mitigation measures, the approval of Planning Case No. ZON2009-00007 (Code Amendment), would result in a significant adverse effect upon the environment.

Section 2: Planning Case No. ZON2009-00007 for the Zone 2 Landslide Moratorium Ordinance Revisions is consistent with the Rancho Palos Verdes General Plan and with the underlying Residential, ≤ 1 DU/acre and Residential, 1-2 DU/acre land use designations, which will not be changed as a result of the approval of the proposed project.

Section 3: With the appropriate mitigation measures, which require Neighborhood Compatibility Analysis for new residences; limitations on exterior illumination; imposition of City and regional restrictions upon fugitive dust control and construction vehicle emissions; preparation of biological surveys for properties identified as containing sensitive vegetation communities; protection of cultural resources during grading operations; completion of geotechnical analysis of any proposed grading and construction prior to building permit issuance; imposition of fire protection requirements upon the construction of all new structures in accordance with the City's most recently-adopted Building Code; control and treatment of site runoff both during and after construction; limitations on construction hours and haul routes; and connection of all new structures to the Abalone Cove Sewer System, the proposed project will not have a significant impact on the environment.

Section 4: Based upon the foregoing findings, the adoption of the proposed Mitigated Negative Declaration is in the public interest.

Section 5: The time within which the judicial review of the decision reflected in this Resolution, if available, must be sought is governed by Section 1094.6 of the California Code of Civil Procedure and other applicable short periods of limitation.

Section 6: For the foregoing reasons and based on the information and findings included in the Staff Report, Environmental Assessment and other components of the legislative record, in the proposed Mitigated Negative Declaration, and in the public comments received by the City Council, the City Council of the City of Rancho Palos Verdes hereby certifies that the Mitigated Negative Declaration has been prepared in compliance with CEQA and adopts the attached Mitigation Monitoring Program (Exhibit 'A') associated with Planning Case No. ZON2009-00007 for a Code Amendment, thereby approving amendments to Chapter 15.20 (Moratorium on Land Use Permits) of the Rancho Palos Verdes Municipal Code to establish an exception category to allow for the future development of the sixteen (16) *Monks* plaintiffs' undeveloped lots in Zone 2.

PASSED, APPROVED, AND ADOPTED this ___th day of September 2009.

Mayor

Attest:

City Clerk

State of California)
County of Los Angeles) ss
City of Rancho Palos Verdes)

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, hereby certify that the above Resolution No. 2009-__ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on September __, 2009.

City Clerk

Exhibit 'A'

Mitigation Monitoring Program

Project: Case No. ZON2009-00007 (Code Amendment & Environmental Assessment)

Location: Sixteen (16) *Monks* Plaintiffs' Lots in "Zone 2" of the Landslide Moratorium Area
Rancho Palos Verdes, CA 90275

Applicant: City of Rancho Palos Verdes

Landowners: Monks, Vanderlip, Haber, Stewart, Barnett, Smith, Broz, Ruth, Agahee, Case, Clark,
Cruce & Compton, Tabor, Teh and Kiss

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I. INTRODUCTION

PURPOSE

This Mitigation Monitoring Program (MMP) is to allow the following project, located at within "Zone 2" of the City's Landslide Moratorium Area: The revised "Zone 2 Landslide Moratorium Ordinance Revisions" would create a new exception category in the City's Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to allow the development of sixteen (16) undeveloped lots in Zone 2 of the City's Landslide Moratorium Area. This action is in response to the California State Court of Appeal's decision in the case of *Monks v. Rancho Palos Verdes*, which found that the City's prohibition against the development of undeveloped lots in Zone 2 was a taking and an impermissible impediment to the development of the plaintiffs' lots. Within Zone 2, there are currently forty-seven (47) undeveloped lots, of which sixteen (16) lots are owned by the plaintiffs in the *Monks* case. The proposed exception category would apply only to the *Monks* plaintiffs' sixteen (16) lots

The proposed substantive revisions to the Landslide Moratorium Ordinance include the addition of subsection P to Section 15.20.040 (Exceptions), to wit:

The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office, identified as belonging to the plaintiffs in the case "Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263, 84 Cal. Rptr. 3d 75 (Cal. App. 2 Dist., 2008)"; provided, that a landslide moratorium exception permit is approved by the Director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this Chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this Code are satisfied, and the parcel is served by a sanitary sewer system. Prior to the issuance of a landslide moratorium exception permit, the applicant shall submit to the Director any geological or geotechnical studies reasonably required by the City to demonstrate to the satisfaction of the City geotechnical staff that the proposed project will not aggravate the existing situation.

Non-substantive revisions to the Landslide Moratorium Ordinance that are also proposed include the addition of cross-references to the new subsection P and the map of Zone 2 in Sections 15.20.050 (Landslide Mitigation Measures Required), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

The MMP responds to Section 21081.6 of the Public Resources Code, which requires a lead or responsible agency that approves or carries out a project where a Mitigated Negative Declaration has identified significant environmental effects, to adopt a "reporting or monitoring program for adopted or required changes to mitigate or avoid significant environmental effects." The City of Rancho Palos Verdes is acting as lead agency for the project.

An Initial Study/Mitigated Negative Declaration was prepared to address the potential environmental impacts of the project. Where appropriate, this environmental document recommended mitigation measures to mitigate or avoid impacts identified. Consistent with Section 21080 (2)(c) of the Public Resources Code, a mitigation reporting or monitoring program is required to ensure that the adopted mitigation measures under the jurisdiction of the City are implemented. The City will adopt this MMP when adopting the Mitigated Negative Declaration.

ENVIRONMENTAL PROCEDURES

This MMP has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.) and the State Guidelines for Implementation of CEQA (CEQA Guidelines), as amended (California Administrative Code Section 15000 et seq.). This MMP complies with the rules, regulations, and procedures adopted by the City of Rancho Palos Verdes for implementation of CEQA.

MITIGATION MONITORING PROGRAM REQUIREMENTS

Section 21081.6 of the Public Resources Code states: "When making the findings required by subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21081, the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program."

II. MANAGEMENT OF THE MITIGATION MONITORING PROGRAM

ROLES AND RESPONSIBILITIES

The MMP for the project will be in place through all phases of the project including final design, pre-grading, construction, and operation. The City will have the primary enforcement role for the mitigation measures.

MITIGATION MONITORING PROGRAM PROCEDURES

The mitigation monitoring procedures for this MMP consists of, filing requirements, and compliance verification. The Mitigation Monitoring Checklist and procedures for its use are outlined below.

Mitigation Monitoring Program Checklist

The MMP Checklist provides a comprehensive list of the required mitigation measures. In addition, the Mitigation Monitoring Checklist includes: the implementing action when the mitigation measure will occur; the method of verification of compliance; the timing of verification; the department or agency responsible for implementing the mitigation measures; and compliance verification. Section III provides the MMP Checklist.

Mitigation Monitoring Program Files

Files shall be established to document and retain the records of this MMP. The files shall be established, organized, and retained by the City of Rancho Palos Verdes department of Planning, Building, and Code Enforcement.

Compliance Verification

The MMP Checklist shall be signed when compliance of the mitigation measure is met according to the City of Rancho Palos Verdes Director of Planning, Building, and Code Enforcement. The compliance verification

section of the MMP Checklist shall be signed, for mitigation measures requiring ongoing monitoring, and when the monitoring of a mitigation measure is completed.

MITIGATION MONITORING OPERATIONS

The following steps shall be followed for implementation, monitoring, and verification of each mitigation measure:

1. The City of Rancho Palos Verdes, Director of Planning, Building, and Code Enforcement shall designate a party responsible for monitoring of the mitigation measures.
2. The City of Rancho Palos Verdes, Director of Planning, Building, and Code Enforcement shall provide to the party responsible for the monitoring of a given mitigation measure, a copy of the MMP Checklist indicating the mitigation measures for which the person is responsible and other pertinent information.
3. The party responsible for monitoring shall then verify compliance and sign the Compliance Verification column of the MMP Checklist for the appropriate mitigation measures.

Mitigation measures shall be implemented as specified by the MMP Checklist. During any project phase, unanticipated circumstances may arise requiring the refinement or addition of mitigation measures. The City of Rancho Palos Verdes, Director of Planning, Building, and Code Enforcement with advice from Staff or another City department, is responsible for recommending changes to the mitigation measures, if needed. If mitigation measures are refined, the Director of Planning, Building, and Code Enforcement would document the change and shall notify the appropriate design, construction, or operations personnel about refined requirements.

III. MITIGATION MONITORING PROGRAM CHECKLIST

INTRODUCTION

This section provides the MMP Checklist for the project as approved by the Planning Commission of the City of Rancho Palos Verdes on November 11, 2003. Mitigation measures are listed in the order in which they appear in the Initial Study.

- * **Types** of measures are *project design, construction, operational, or cumulative*.
- * **Time of Implementation** indicates **when** the measure is to be implemented.
- * **Responsible Entity** indicates **who** is responsible for implementation.
- * **Compliance Verification** provides space for future reference and notation that compliance has been monitored, verified, and is consistent with these mitigation measures.

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
1. AESTHETICS				
<u>AES-1:</u> All new residences shall be subject to neighborhood compatibility analysis under the provisions of Section 17.02.030.B (Neighborhood Compatibility) of the Rancho Palos Verdes Municipal Code.	Project Design	Prior to Planning approval	Property owner	Department of Planning, Building and Code Enforcement
<u>AES-2:</u> Exterior illumination for new residences shall be subject to the provisions of Section 17.56.030 (Outdoor Lighting for Residential Uses) of the Rancho Palos Verdes Municipal Code.	Project Design	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
2. AIR QUALITY				
<u>AIR-1:</u> During construction, the applicant shall be responsible for the implementation of all dust and erosion control measures required by the Building Official.	Construction	Prior to Grading Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<u>AIR-2:</u> Trucks and other construction vehicles shall not park, queue and/or idle at the project sites or in the adjoining public or private rights-of-way before 7:00 AM, Monday through Saturday, in accordance with the permitted hours of construction stated in Section 17.56.020.B of the Rancho Palos Verdes Municipal Code.	Construction	On-going	Property owner	Department of Planning, Building and Code Enforcement

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
3. BIOLOGICAL RESOURCES				
<p><u>BIO-1:</u> For lots that are identified as containing sensitive habitat on the City's most-recent vegetation maps and/or that abut any portion of the current or proposed future boundary of the Palos Verdes Nature Preserve, the applicant shall be required to prepare a biological survey as a part of a complete application for the construction of a new, single-family residence. Said survey shall identify the presence or absence of sensitive plant and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species, including off-site habitat impacts as a result of Fire Department-mandated fuel modification. The applicant and/or any successors in interest to the subject property shall be required to mitigate such habitat loss through the payment of a mitigation fee to the City's Habitat Restoration Fund.</p>	<p>Construction and Post-Construction</p>	<p>Prior to Building Permit final</p>	<p>Property owner</p>	<p>Department of Planning, Building and Code Enforcement</p>
4. CULTURAL RESOURCES				
<p><u>CUL-1:</u> Prior to the issuance of a grading permit, the applicant shall consult with the South Central Coastal Information Center (SCCIC) regarding any known archaeological sites on or within a half-mile radius of the subject property.</p>	<p>Construction</p>	<p>Prior to Grading Permit issuance</p>	<p>Property owner</p>	<p>Department of Planning, Building and Code Enforcement</p>
<p><u>CUL-2:</u> Prior to the issuance of a grading permit, the applicant shall conduct a Phase 1 archaeological survey of the property. The survey results shall be provided to the Director of Planning, Building and Code Enforcement for review prior to grading permit issuance.</p>	<p>Construction</p>	<p>Prior to Grading Permit issuance</p>	<p>Property owner</p>	<p>Department of Planning, Building and Code Enforcement</p>

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<p><u>CUL-3:</u> Prior to the commencement of grading, the applicant shall retain a qualified paleontologist and archeologist to monitor grading and excavation. In the event undetected buried cultural resources are encountered during grading and excavation, work shall be halted or diverted from the resource area and the archeologist and/or paleontologist shall evaluate the remains and propose appropriate mitigation measures.</p>	Construction	Prior to commencement of grading	Property owner	Department of Planning, Building and Code Enforcement
5. GEOLOGY AND SOILS				
<p><u>GEO-1:</u> If required by the City geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the City geotechnical staff.</p>	Construction	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<p><u>GEO-2:</u> The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the Director pursuant to the terms of Chapter 15.20 of the Rancho Palos Verdes Municipal Code. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit.</p>	Construction and Post-Construction	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<p><u>GEO-3:</u> All other necessary permits and approvals required pursuant to the Rancho Palos Verdes Municipal Code or any other applicable statute, law or ordinance shall be obtained.</p>	Construction	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<p><u>GEO-4:</u> Prior to building permit issuance, the applicant shall prepare an erosion control plan for the review and approval of the Building Official. The applicant shall be responsible for continuous and effective implementation of the erosion control plan during project construction</p>	Construction	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
6. HAZARDS AND HAZARDOUS MATERIALS				
<u>HAZ-1:</u> New, single-family residences and related accessory structures shall be designed to incorporate all fire protection requirements of the City's most recently adopted Building Code, to the satisfaction of the Building Official.	Project Design	During Building & Safety plan check	Property owner	Department of Planning, Building and Code Enforcement
7. HYDROLOGY/WATER QUALITY				
<u>HYD-1:</u> Any development proposal located within, adjacent to or draining into a designated Environmentally Sensitive Area (ESA) and involving the creation of two thousand five hundred square feet or more ($\geq 2,500$ SF) of impervious surface shall require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant prior to building permit issuance.	Project Design	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<u>HYD-2:</u> If lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant.	Construction and Post-Construction	Prior to Building Permit issuance	Property owner	Department of Public Works
<u>HYD-3:</u> Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.	Construction and Post-Construction	Prior to Building Permit issuance	Property owner	Department of Public Works
<u>HYD-4:</u> All landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.	Post-Construction	Prior to Building Permit issuance	Property owner	Department of Public Works
8. NOISE				
<u>NOI-1:</u> Permitted hours and days for construction activity are 7:00 AM to 7:00 PM, Monday through Saturday, with no construction activity permitted on Sundays or on the legal holidays specified in Section 17.96.920 of the Rancho Palos Verdes Municipal Code without a special construction permit.	Construction	On-Going	Property owner	Department of Planning, Building and Code Enforcement

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
9. UTILITIES/SERVICE SYSTEMS				
<p><u>UTL-1:</u> If the Director of Public Works determines that the sanitary sewer system cannot accommodate a new connection at the time of building permit issuance, the project shall be connected to a City-approved holding tank system until such time as the sanitary sewer system can accommodate the project. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the sanitary sewer system.</p>	Operational	Prior to Grading Permit issuance	Property owner	Department of Public Works
<p><u>UTL-2:</u> If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the City's Building Official. For the purposes of this mitigation measure, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after July 6, 2000, additional plumbing fixtures may be permitted and the requirement for a holding</p>	Construction	Prior to Grading Permit issuance	Property owner	Department of Public Works

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<p>tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of the Rancho Palos Verdes Municipal Code, or by an agreement or condition of project approval.</p>				
<p><u>UTL-3:</u> If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the City. Such covenant shall be submitted to the Director prior to the issuance of a building permit.</p>	Operational	Prior to Grading Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<p><u>UTL-4:</u> If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the City a sewer and storm drain easement on the subject property, as well as any other easement required by the City to mitigate landslide conditions. Such covenant shall be submitted to the Director prior to the issuance of a building permit.</p>	Project Design	Prior to Building Permit issuance	Property owner	Department of Planning, Building and Code Enforcement

MITIGATION MEASURES	TYPE	TIME OF IMPLEMENTATION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<p>UTL-5: If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of a moratorium exception permit.</p>	<p>Construction</p>	<p>On-going</p>	<p>Property owner</p>	<p>Department of Planning, Building and Code Enforcement</p>

ORDINANCE NO. 498

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES ADOPTING AMENDMENTS TO CHAPTER 15.20 (MORATORIUM ON LAND USE PERMITS) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW FOR THE FUTURE DEVELOPMENT OF THE SIXTEEN (16) *MONKS* PLAINTIFFS' UNDEVELOPED LOTS IN ZONE 2

WHEREAS, on December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*, so the City Council must consider the actions that are necessary to comply with the Court of Appeal's decision; and,

WHEREAS, on January 21, 2009, the City Council adopted Resolution No. 2009-06 repealing Resolution No. 2002-43, which had required property owners in Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots and was the purported catalyst for the filing of the *Monks* lawsuit; and,

WHEREAS, next action necessary to comply with the Court of Appeal's decision is to enact revisions to the current Moratorium Ordinance to allow the development of the *Monks* plaintiffs' sixteen (16) undeveloped lots in Zone 2; and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"), the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*, the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), the City of Rancho Palos Verdes prepared an Initial Study and determined that, by incorporating mitigation measures into the Negative Declaration, there is no substantial evidence that the approval of Planning Case No. ZON2009-00007 would result in a significant adverse effect on the environment. Accordingly, a Draft Mitigated Negative Declaration was prepared and circulated for public review for thirty (30) days between August 10, 2009 and September 9, 2009, and notice of that fact was given in the manner required by law; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the City Council conducted a public hearing on September 1, 2009, and September 15, 2009, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed revisions to Chapter 15.20 as set forth in the City Council Staff reports of those dates; and,

WHEREAS, at its September 15, 2009, meeting, after hearing public testimony, the City Council adopted Resolution No. 2009-__ making certain findings related to the requirements of the California Environmental Quality Act (CEQA) and adopting a Mitigation Monitoring Program and Mitigated Negative Declaration for the proposed project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES ORDAIN AS FOLLOWS:

Section 1: The City Council has reviewed and considered the amendments to Chapter 15.20 of Title 15 of the Municipal Code.

Section 2: The City Council finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent with the Rancho Palos Verdes General Plan in that they uphold, and do not hinder, the goals and policies of those plans, in particular to balance the rights of owners of undeveloped properties within the Landslide Moratorium Area to make reasonable use of their properties while limiting the potential impacts resulting from such use upon landslide movement, soil stability and public safety within and adjacent to the Landslide Moratorium Area.

Section 3: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent Court of Appeal's decision in *Monks v. City of Rancho Palos Verdes* in that they will allow the potential future development of the sixteen (16) *Monks* plaintiffs' undeveloped lots within Zone 2 of the Landslide Moratorium Area with new, single-family residences, thereby achieving parity with the rights enjoyed by the owners of the developed lots in Zone 2 of the Landslide Moratorium Area.

Section 4: The City Council further finds that there is no substantial evidence that the amendments to Chapter 15.20 of Title 15 of the Municipal Code would result in significant environmental effects or a substantial increase in the severity of such effects. The City Council considered the Mitigated Negative Declaration prior to making its decision regarding the code amendments contemplated herein.

Section 5: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are necessary to protect the public health, safety, and general welfare in the area.

Section 6: Based upon the foregoing, Section 15.20.040 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

The moratorium shall not be applicable to any of the following:

- A. *Maintenance of existing structures or facilities which do not increase the land coverage of those facilities or add to the water usage of those facilities;*
- B. *Replacement, repair or restoration of a residential building or structure which has been damaged or destroyed due to one of the following hazards, provided that a landslide moratorium exception permit is approved by the director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this chapter:*
 - 1. *A Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the*

same square footage and in the same general location on the property and such construction will not aggravate any hazardous geologic condition, if a hazardous geologic condition remains. Prior to the approval of a landslide moratorium exception permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation. The applicant shall comply with any requirements imposed by the city's geotechnical staff and shall substantially repair the geologic condition to the satisfaction of the city geotechnical staff prior to the issuance of a final building permit. Upon application to the director, setbacks may conform to the setbacks listed below:

Minimum Setback Standards

Front	Interior side	Street side	Rear
20	5	10	15

- 2. *A Hazard Other Than a Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property and such construction will not aggravate any hazardous condition, if a hazardous condition remains. Prior to the approval of a landslide moratorium exception permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation. Upon application to the director, setbacks may conform to the setbacks listed in subsection (B)(1) of this section;*
- C. *Building permits for existing structures which were constructed prior to October 5, 1978, for which permits were not previously granted, in order to legalize such structure(s). Such permits may only be granted if the structure is brought into substantial compliance with the Uniform Building Code;*
- D. *The approval of an environmental assessment or environmental impact report for a project as to which the city or redevelopment agency is the project applicant;*
- E. *Projects that are to be performed or constructed by the city or by the Rancho Palos Verdes redevelopment agency to mitigate the potential for landslide or to otherwise enhance public safety;*
- F. *Remedial grading to correct problems caused by landslide or to otherwise enhance public safety, performed pursuant to a permit issued pursuant to Section 17.76.040(B)(3) of this Code;*

- G. *Geologic Investigation Permits. Prior to the approval of such a permit, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed investigation will not aggravate the existing situation;*
- H. *Minor projects on a lot that is in the "landslide moratorium area," as outlined in red on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; provided that a landslide moratorium exception permit is approved by the director and provided that the project complies with the criteria set forth in Section 15.20.050 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such minor projects, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation;*
- I. *Construction or installation of temporary minor nonresidential structures which are no more than three hundred twenty square feet in size, with no plumbing fixtures and which do not increase water use, may be approved by the director. If the lot is served by a sanitary sewer system, the permit may allow the installation of plumbing fixtures. All permits shall include a requirement that a use restriction covenant, in a form acceptable to the city which prevents the structure from being*

used for any purpose other than a nonhabitable use, is recorded with the Los Angeles County registrar-recorder. A minor nonresidential structure is defined as temporary if the Building Code does not require it to be erected upon or attached to a fixed, permanent foundation and if, in fact, it will not be erected upon or attached to such a foundation. Prior to approval of the application, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation;

- J. Submittal of a lot-line adjustment application;*
- K. Minor projects on a lot that is in the "landslide moratorium area," as outlined in blue on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; provided that a landslide moratorium exception permit is approved by the director and provided that the project complies with the criteria set forth in Section 15.20.050 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior the approval of a landslide moratorium exception permit for such minor projects, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city geotechnical staff that the proposed project will not aggravate the existing situation;*
- L. Construction of one attached or detached garage per parcel that does not exceed an area of six hundred square feet, without windows or any plumbing fixtures, on*

fixtures, on a lot that currently is developed with a residential structure or other lawfully existing nonresidential structure; provided that a landslide moratorium exception permit is approved by the director, and provided that the project complies with the criteria set forth in Section 15.20.050. If the lot is served by a sanitary sewer system, the permit may allow the installation of windows and plumbing fixtures in the garage. The approval of a landslide moratorium exception permit for such a project shall be conditioned to require that a use restriction covenant, in a form acceptable to the city, that prevents the garage from being used for any purpose other than parking of vehicles and storage of personal property is recorded with the Los Angeles County registrar-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such garage, the applicant shall submit to the director any geological or geotechnical studies reasonably required by the city to demonstrate to the satisfaction of the city's geotechnical staff that the proposed project will not aggravate the existing situation;

- M. Submittal of applications for discretionary planning permits for structures or uses which are ancillary to the primary use of the lot or parcel, where there is no possibility of any adverse impact upon soil stability. Examples of these types of applications include special use permits for minor, temporary uses and events; fence, wall and hedge permits that do not involve grading or the construction of retaining walls; permits for the keeping of large domestic animals and exotic animals; conditional use permits for the establishment of a use or activity at or on an existing structure where no structural modifications are required; and such other uses, activities and structures that the city geotechnical staff determines to have no potential for adverse impacts on landslide conditions;*
- N. Minor projects on those lots which are currently developed with a residential structure, which do not involve new habitable space, which cannot be used as a gathering space and viewing area, and which do not constitute lot coverage;*
- O. Permits issued pursuant to Section 15.20.110 of this chapter to connect existing structures with functional plumbing fixtures to an operational sewer system;*
- P. The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office, identified as belonging to the plaintiffs in the case "Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263, 84 Cal. Rptr. 3d 75 (Cal. App. 2 Dist., 2008)"; provided, that a landslide moratorium exception permit is approved by the Director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this Chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this Code are satisfied, and the parcel is served by a sanitary sewer system. Prior to*

the issuance of a landslide moratorium exception permit, the applicant shall submit to the Director any geological or geotechnical studies reasonably required by the City to demonstrate to the satisfaction of the City geotechnical staff that the proposed project will not aggravate the existing situation.

Section 7: Based upon the foregoing, Section 15.20.050 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Within the landslide moratorium area as identified in Section 15.20.020 of this chapter, the city shall require that appropriate landslide abatement measures be implemented as conditions of issuance of any permit issued pursuant to this chapter. With respect to proposed projects and uses requiring a landslide moratorium exception permit pursuant to Sections 15.20.040(B), (H), (K), (L) and (P), which must satisfy all of the criteria set forth in this section, the conditions imposed by the city shall include, but not be limited to, the following:

- A. If lot drainage deficiencies are identified by the director of public works, all such deficiencies shall be corrected by the applicant.*
- B. If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the city's building official. For the purposes of this subsection, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after the effective date of the ordinance codified in this section (July 6, 2000), additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of this chapter, or by an agreement or condition of project approval.*

- C. *Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.*
- D. *If required by the city geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the city geotechnical staff.*
- E. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the city. Such covenant shall be submitted to the director prior to the issuance of a building permit.*
- F. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the city a sewer and storm drain easement on the subject property, as well as any other easement required by the city to mitigate landslide conditions. Such covenant shall be submitted to the director prior to the issuance of a building permit.*
- G. *A hold harmless agreement satisfactory to the city attorney promising to defend, indemnify and hold the city harmless from any claims or damages resulting from the requested project. Such agreement shall be submitted to the director prior to the issuance of a building permit.*
- H. *The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the director pursuant to the terms of this chapter. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit.*
- I. *All landscaping irrigation systems shall be part of a water management system approved by the director of public works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.*
- J. *If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of the moratorium exception permit.*
- K. *All other necessary permits and approvals required pursuant to this code or any other applicable statute, law or ordinance shall be obtained.*

Section 8: Based on the foregoing, Section 15.20.060 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

- A. *Applicants for an exception to this chapter under Sections 15.20.040(B), (H), (K), (L) and (P), shall file an application for a landslide moratorium exception permit with the director. The application shall be signed by the property owner, and shall include the following:*
1. *A letter, signed by the property owner, setting forth the reason for request, as well as a full description of the project;*
 2. *Copies of a site plan, showing accurate lot dimensions; the location, dimensions, and heights of all existing and proposed structures; the location of the existing and proposed septic systems and/or holding tank systems; and the location of the existing and/or proposed sanitary sewer system, if the site is or will be served by a sanitary sewer system. The number of copies required shall be determined by the director;*
 3. *Information satisfactory to the city's geotechnical staff (including but not limited to geological, geotechnical, soils or other reports) reasonably required by the city to demonstrate that the proposed project will not aggravate the existing situation;*
 4. *A fee as established by resolution of the city council;*
 5. *If grading is proposed, a grading plan showing the topography of the lot and all areas of project cut and fill, including a breakdown of the earthwork quantities.*
- B. *A landslide moratorium exception permit application shall become null and void if, after submitting the required application to the director, the application is administratively withdrawn by the director because the application is allowed to remain incomplete by the applicant for a period which exceeds one hundred eighty days, or if the application is withdrawn by the applicant.*

Section 9: Based on the foregoing, Section 15.20.110 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Any owner of a lot or parcel within the "landslide moratorium area," as outlined in red or green on the landslide moratorium map on file in the director's office, which is developed with a residential structure or any other structure that contains one or more operational plumbing fixtures and is served by a sanitary sewer system, as defined in this chapter, shall connect such structure(s) to the sanitary sewer system within six months after the commencement of operation of the sanitary sewer system. Either the director or the director of public works shall determine whether a lot or parcel is served by a sanitary sewer system, whether a structure contains one or more operational plumbing fixtures, or whether the connection to the sewer system is performed properly, including, without limitation, removal, or the discontinuation of the use, of any existing septic system.

Section 10: After the effective date of this Ordinance, it shall apply to all Landslide Moratorium Exception permits and any subsequent development applications submitted on or after the effective date of this Ordinance.

Section 11: The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED THIS ___TH DAY OF SEPTEMBER 2009.

MAYOR

ATTEST:

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss
CITY OF RANCHO PALOS VERDES)

I, CARLA MORREALE, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. 498 passed first reading on September 1, 2009, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on September __, 2009, and that the same was passed and adopted by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY CLERK

**City of Rancho Palos Verdes
ENVIRONMENTAL CHECKLIST FORM**



1. Project title:

Zone 2 Landslide Moratorium Ordinance Revisions
Planning Case No. ZON2009-00007
(Code Amendment and Environmental Assessment)
SCH No. 2009021050

2. Lead agency name/ address:

City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

3. Contact person and phone number:

Kit Fox, AICP, Associate Planner
City of Rancho Palos Verdes
(310) 544-5228

4. Project location:

Sixteen (16) *Monks* Plaintiffs' Lots in "Zone 2" of the Landslide Moratorium Area (as depicted in Figure 1 and Table 1)
City of Rancho Palos Verdes
County of Los Angeles

5. Project sponsor's name and address:

City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

6. General plan designation:

Residential, ≤ 1 DU/acre and Residential, 1-2 DU/acre

7. Coastal plan designation:

Not applicable

8. Zoning:

RS-1 and RS-2

9. Description of project:

The proposed "Zone 2 Landslide Moratorium Ordinance Revisions" would create a new exception category in the City's Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to allow the development of sixteen (16) undeveloped lots in Zone 2 of the City's Landslide Moratorium Area. This action is in response to the California State Court of Appeal's decision in the case of *Monks v. Rancho*

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Palos Verdes, which found that the City's prohibition against the development of undeveloped lots in Zone 2 was a taking and an impermissible impediment to the development of the plaintiffs' lots. Within Zone 2, there are currently forty-seven (47) undeveloped lots, of which sixteen (16) lots are owned by the plaintiffs in the *Monks* case. The proposed exception category would apply only to the *Monks* plaintiffs' sixteen (16) lots

The proposed substantive revisions to the Landslide Moratorium Ordinance include the addition of subsection P to Section 15.20.040 (Exceptions), to wit:

The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office, identified as belonging to the plaintiffs in the case "Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263, 84 Cal. Rptr. 3d 75 (Cal. App. 2 Dist., 2008)"; provided, that a landslide moratorium exception permit is approved by the Director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this Chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this Code are satisfied, and the parcel is served by a sanitary sewer system. Prior to the issuance of a landslide moratorium exception permit, the applicant shall submit to the Director any geological or geotechnical studies reasonably required by the City to demonstrate to the satisfaction of the City geotechnical staff that the proposed project will not aggravate the existing situation.

Non-substantive revisions to the Landslide Moratorium Ordinance that are also proposed include the addition of cross-references to the new subsection P and the map of Zone 2 in Sections 15.20.050 (Landslide Mitigation Measures Required), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

10. Description of project site (as it currently exists):

The project site measures approximately one hundred twelve (112) acres and consists of one hundred eleven (111) lots, of which sixty-four (64) lots are developed and forty-seven (47) lots are undeveloped. Of these undeveloped lots, sixteen (16) lots are owned by *Monks* plaintiffs, which are the subject of the proposed Code Amendment. The vast majority of the developed lots are improved with single-family residences and related accessory structures and uses. The largest developed lot in Zone 2 is occupied by the Portuguese Bend Riding Club, a nonconforming commercial stable that was established prior to the City's incorporation in 1973. Private streets within Zone 2 are maintained by the Portuguese Bend Community Association. The majority of the undeveloped lots contain non-native vegetation, and some have small, non-habitable structures (i.e., sheds, stables, fences, etc.) for horsekeeping or horticultural uses.

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11. Surrounding land uses and setting:

	Land Uses	Significant Features
On-site	Developed and undeveloped residential lots in the <i>Portuguese Bend</i> community, including the Portuguese Bend Riding Club	See description above.
Northeast	Developed residential lots in the <i>Portuguese Bend</i> community and City-owned open space land in the Portuguese Bend Reserve of the Palos Verdes Nature Preserve	Three (3) developed residential lots are located at the northeast corner of Narcissa Drive and Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. The Portuguese Bend Reserve, acquired by the City in 2005 and also within Zone 1, contains a variety of natural vegetation communities and is a part of the larger Palos Verdes Nature Preserve.
Northwest & West	Developed residential lots in the <i>Portuguese Bend</i> community and vacant, residentially-zoned land owned by York Long Point Associates (Upper & Lower Filiorum)	The Vanderlip Estate is located at the northerly terminus of Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. Also within Zone 1 are the Filiorum properties. Upper Filiorum contains a variety of natural vegetation communities, and the City is in on-going negotiations to acquire this property as an extension of the larger Palos Verdes Nature Preserve. Lower Filiorum is the subject of a current application for a Moratorium Exclusion to allow for future residential development.
South, Southeast & East	Developed and undeveloped residential lots in the <i>Portuguese Bend</i> community	Surrounding lots in these areas are located in Zone 5 (the area affected by the 1978 Abalone Cove landslide), Zone 6 (the active Portuguese Bend landslide area) and Zone 3 (located between Altamira Canyon and the westerly edge of the Portuguese Bend landslide area). Some existing residences in these areas have experienced distress as the result and past and current land movement.

12. Other public agencies whose approval is required:

None.

Figure 1
Aerial Photo and Boundary of “Zone 2,” Identifying *Monks* Plaintiffs’ Lots



Table 1
List of Monks Plaintiffs’ Undeveloped Lots

Assessor’s Parcel No.	Legal Description	Owner(s)
7572-002-029	Parcel 1, Parcel Map 8947	Vanderlip
7572-009-005	Lot 20, Block 3, Tract 14195	Monks
7572-009-006	Lot 21, Block 3, Tract 14195	Monks
7572-009-007	Lot 22, Block 3, Tract 14195	Haber
7572-009-014	Lot 7, Block 4, Tract 14195	Stewart
7572-009-021	Lot 14, Block 4, Tract 14195	Barnett
7572-010-011	Lot 3, Block 3, Tract 14195	Smith
7572-010-012	Lot 4, Block 3, Tract 14195	Broz
7572-010-021	Lot 13, Block 3, Tract 14195	Ruth
7572-010-022	Lot 14, Block 3, Tract 14195	Agahée
7572-010-024	Lot 16, Block 3, Tract 14195	Case
7572-010-025	Lot 17, Block 3, Tract 14195	Clark
7572-010-026	Lot 18, Block 3, Tract 14195	Cruce & Compton
7572-010-027	Lot 19, Block 3, Tract 14195	Tabor
7572-011-008	Lot 8, Tract 14500	Teh
7572-011-009	Lot 9, Tract 14500	Kiss

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ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicted by the checklist on the following pages.

- | | | |
|---|--|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agricultural Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology/Water Quality |
| <input type="checkbox"/> Land Use/Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population/Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION:

On the basis of this initial evaluation:

- I find that the project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that, although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required but must analyze only the effects that remain to be addressed.
- I find that, although the proposed project could have a significant effect on the environment, because all potentially significant effects, (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed on the proposed project, nothing further is required.

Signature:  Date: August 10, 2009
Printed Name: Kit Fox, Associate Planner For: City of Rancho Palos Verdes

EVALUATION OF ENVIRONMENTAL IMPACTS:

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1. AESTHETICS. Would the project:					
a) Have a substantial effect on a scenic vista?	1				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historical buildings, within a state scenic highway?	8			X	
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	11		X		
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	11		X		
Comments:					
<p>a) The <i>Monks</i> plaintiffs' lots in Zone 2 do not fall within any scenic vista identified in the City's General Plan. As such, the proposed project will have no substantial effect upon a scenic vista.</p> <p>b) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Since these lots are undeveloped, there are no historical buildings or other structures that could be damaged as a result of the approval of the proposed project, although it is possible that some mature shrubs and trees might be removed as a result of future development. As such, damage to any scenic resources as a result of the proposed project will be less than significant.</p> <p>c) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The development of these lots may alter the semi-rural visual character of Zone 2 by increasing the number and density of man-made structures in the neighborhood. Therefore, in order to reduce the visual character impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended: <u>AES-1:</u> All new residences shall be subject to neighborhood compatibility analysis under the provisions of Section 17.02.030.B (Neighborhood Compatibility) of the Rancho Palos Verdes Municipal Code.</p> <p>d) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Zone 2 is a semi-rural area and does not have street lights, so nighttime illumination of the neighborhood is generally limited to exterior lighting for existing single-family residences. The potential construction of sixteen (16) new single-family residences will increase the amount of nighttime lighting in the neighborhood. Therefore, in order to reduce the light and glare impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended: <u>AES-2:</u> Exterior illumination for new residences shall be subject to the provisions of Section 17.56.030 (Outdoor Lighting for Residential Uses) of the Rancho Palos Verdes Municipal Code.</p>					

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Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2. AGRICULTURE RESOURCES¹. Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resource Agency, to non-agricultural use?	8				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	8				X
c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to a non-agricultural use?	8				X
Comments:					
a-c) The <i>Monks</i> plaintiff's lots in Zone 2 are zoned for single-family residential use at densities of up to two (2) dwelling units per acre (i.e., RS-1 and RS-2). Fifteen (15) of the <i>Monks</i> plaintiffs' lots are zoned RS-2 with the remaining lot zoned RS-1. Although non-commercial agricultural use is permitted in these zones, there is no agricultural use in the area at present. The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Furthermore, none of these lots qualify as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, nor are any of the lots in Zone 2 subject to a Williamson Act contract. Therefore, the proposed project will have no impact upon agricultural resources.					
3. AIR QUALITY². Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	3		X		
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	3		X		
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	3		X		
d) Expose sensitive receptors to substantial pollutant concentrations?	3		X		

1 In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the Californian Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as a optional model to use in assessing impacts on agriculture and farmland.

2 Where available, the significant criteria established by the applicable air quality management or air pollution control districts may be relied upon to make the following determinations.

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e) Create objectionable odors affecting a substantial number of people?	2, 11			X	
<p>Comments:</p> <p>a-d) The <i>Monks</i> plaintiffs' lots in Zone 2 are located within the South Coast Air Basin, which is an area of non-attainment for Federal air quality standards for ozone (O₃), carbon monoxide (CO), and suspended particulate matter (PM¹⁰ and PM^{2.5}). The proposed project would limit the amount of non-remedial grading for the development of up to sixteen (16) new single-family residences to less than fifty cubic yards (50 CY) each, for a cumulative total of less than 800 cubic yards. The sixteen (16) undeveloped <i>Monks</i> plaintiffs' lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since the subject lots are owned by numerous individual owners, they are very unlikely to be developed concurrently, but rather on a piecemeal basis over a period of many years. The average site size for the undeveloped lots in Zone 2 is one (1) acre. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related air quality impacts upon nearby sensitive receptors, such as single-family residences. Based upon the South Coast Air Quality Management District (SCAQMD) guidelines for estimating air quality impacts from construction activities, the development of individual 1-acre parcels would not exceed Localized Significance Thresholds (LSTs) for nitrous oxides (NO_x), CO, PM¹⁰ or PM^{2.5}. In a "worst case" scenario wherein all of the undeveloped lots were developed simultaneously, the total quantity of earth movement would still be less than 800 cubic yards, and with the imposition of the recommended mitigation measures, the impacts of this grading would still be less than significant. In addition, some of the proposed residences might have fireplaces. SCAQMD has adopted rules regulating wood-burning devices, which include a prohibition against the installation of wood-burning fireplaces in new construction beginning in March 2009. Therefore, in order to reduce the air quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:</p> <p><u>AIR-1:</u> During construction, the applicant shall be responsible for the implementation of all dust and erosion control measures required by the Building Official.</p> <p><u>AIR-2:</u> Trucks and other construction vehicles shall not park, queue and/or idle at the project sites or in the adjoining public or private rights-of-way before 7:00 AM, Monday through Saturday, in accordance with the permitted hours of construction stated in Section 17.56.020.B of the Rancho Palos Verdes Municipal Code.</p> <p>e) Since the zoning of the <i>Monks</i> plaintiffs' lot in Zone 2 does not permit industrial or commercial uses, no objectionable odors are expected to be generated as a result of the proposed project.</p>					
<p>4. BIOLOGICAL RESOURCES. Would the project:</p>					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		

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Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption, or other means?	6, 8		X		
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	6, 8			X	
e) Conflict with any local polices or ordinances protecting biological resources, such as tree preservation policy or ordinance?	11			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	6		X		

Comments:

a-c, f) According to the City's vegetation maps, fourteen (14) of the *Monks* plaintiffs' lots are depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are generally not identified as sensitive by State and Federal resource agencies. However, two (2) of the *Monks* plaintiffs' lots in the upper reaches of Altamira Canyon contain patches of coastal sage scrub (CSS) habitat. Several of the undeveloped lots in Zone 2—including seven (7) of the *Monks* plaintiffs' lots—abut the City-owned Portuguese Bend Reserve or the privately-owned Filiorium properties, both of which contain more substantial and cohesive patches of CSS habitat nearby. The Portuguese Bend Preserve is currently a part of the City's larger Palos Verdes Nature Reserve, and the City has been actively pursuing the acquisition of portions of the Upper Filiorium property for inclusion in the Reserve for many years. As such, it is possible that the development of at least seven (7) of the *Monks* plaintiffs in Zone 2 might have significant impacts upon sensitive CSS habitat, either through the direct removal of habitat during construction or as a result of Fire Department-mandated fuel modification on- and/or off-site (i.e., in the Reserve) after construction of new residences is complete. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Nevertheless, in order to reduce the biological resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

BIO-1: For lots that are identified as containing sensitive habitat on the City's most-recent vegetation maps and/or that abut any portion of the current or proposed future boundary of the Palos Verdes Nature Preserve, the applicant shall be required to prepare a biological survey as a part of a complete application for the construction of a new, single-family residence. Said survey shall identify the presence or absence of sensitive plant and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species, including off-site habitat impacts as a result of Fire Department-mandated fuel modification. The applicant and/or any successors in interest to the subject property shall be required to mitigate such habitat loss through the payment of a mitigation fee to the City's Habitat Restoration Fund.

d) According to the City's vegetation maps, fourteen (14) of the *Monks* plaintiffs' lots are depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are generally not identified as sensitive by State and Federal resource agencies. Although there are patches of "Exotic

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Woodland" and CSS habitat on two (2) <i>Monks</i> plaintiffs' lots along Altamira Canyon, these patches are small and isolated, providing limited connectivity for movement or migration. As such, the impact of the proposed project upon wildlife corridors is expected to be less than significant.					
e) The City has a Coastal Sage Scrub Conservation and Management Ordinance, which is codified as Chapter 17.41 of the Rancho Palos Verdes Municipal Code. This ordinance only applies to parcels over two (2) acres in size that contain CSS habitat. Only one (1) of the <i>Monks</i> plaintiffs' lots exceeds this size threshold and contains CSS habitat. As such, any conflicts of the proposed project with local policies or ordinances protecting biological resources are expected to be less than significant.					
5. CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	8				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	5		X		
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	5		X		
d) Disturbed any human remains, including those interred outside of formal cemeteries?	5		X		
Comments:					
a) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Nevertheless, since the lots have remained undeveloped since their creation in the late 1940s, their potential, future development would have no impact upon any historical resources.					
b-d) According to the City's Archaeology Map, the subject site is within a possible area of archaeological resources. The approval of the proposed project would only permit shallow surface excavations less than five feet (5'-0") in depth. In addition, past disking and brush clearance of these undeveloped lots have repeatedly disturbed the ground surface over a period of many years. Nevertheless, it is possible that subsurface cultural resources may exist on some of the <i>Monks</i> plaintiffs' lots in Zone 2. Therefore, in order to reduce the cultural resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:					
<u>CUL-1:</u> Prior to the issuance of a grading permit, the applicant shall consult with the South Central Coastal Information Center (SCCIC) regarding any known archaeological sites on or within a half-mile radius of the subject property.					
<u>CUL-2:</u> Prior to the issuance of a grading permit, the applicant shall conduct a Phase 1 archaeological survey of the property. The survey results shall be provided to the Director of Planning, Building and Code Enforcement for review prior to grading permit issuance.					
<u>CUL-3:</u> Prior to the commencement of grading, the applicant shall retain a qualified paleontologist and archeologist to monitor grading and excavation. In the event undetected buried cultural resources are encountered during grading and excavation, work shall be halted or diverted from the resource area and the archeologist and/or paleontologist shall evaluate the remains and propose appropriate mitigation measures.					

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6. GEOLOGY/SOILS. Would the project:					
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? ³			X		
ii) Strong seismic ground shaking?			X		
iii) Seismic-related ground failure, including liquefaction?			X		
iv) Landslides?			X		
b) Result in substantial soil erosion or the loss of topsoil?				X	
c) Be located on a geological unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X		
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), thus creating substantial risks to life or property?			X		
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?				X	
<p>Comments:</p> <p>a, c-d) The proposed project could result in up to 800 cubic yards of grading related to the construction of up to sixteen (16) new single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The maximum permitted depth of cut and/or fill for such grading would be less than five feet (<5'-0"). The <i>Monks</i> plaintiffs' lots are located in so-called "Zone 2," which is a subarea within the larger Landslide Moratorium Area of the City. According to the Official Maps of Seismic Hazard Zones provided by the State of California Department of Conservation, the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides. The subject properties are within the vicinity of the Palos Verdes fault zone, although there is no evidence of active faulting within Zone 2. The soils of the Palos Verdes Peninsula are also generally known to be expansive and occasionally unstable. Given the known and presumed soils conditions in and around the <i>Monks</i> plaintiffs' lots in Zone 2, it is expected that soil investigations, reviewed and conceptually approved by the City's geotechnical consultant, will be required prior to the development of any new residences. Therefore, in order to reduce</p>					

³ Refer to Division of Mines and Geology Special Publication 42.

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Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>the geology/soils impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:</p> <p>GEO-1: If required by the City geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the City geotechnical staff.</p> <p>GEO-2: The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the Director pursuant to the terms of Chapter 15.20 of the Rancho Palos Verdes Municipal Code. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit.</p> <p>GEO-3: All other necessary permits and approvals required pursuant to the Rancho Palos Verdes Municipal Code or any other applicable statute, law or ordinance shall be obtained.</p> <p>b) During grading and construction operations for any new residences, top soil will be exposed and removed from individual properties. It is the City's standard practice to require the preparation and implementation of an erosion control plan for wind- and waterborne soil for construction projects. The approval of the proposed project will not grant any entitlement to develop these lots. Nevertheless, in order to reduce the erosion impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:</p> <p>GEO-4: Prior to building permit issuance, the applicant shall prepare an erosion control plan for the review and approval of the Building Official. The applicant shall be responsible for continuous and effective implementation of the erosion control plan during project construction.</p> <p>e) The City has constructed a sanitary sewer system that serves the <i>Monks</i> plaintiffs' lot in Zone 2 and other areas of the <i>Portuguese Bend</i> community. The purpose of constructing this system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal of slowing or stopping land movement. New residences that may be constructed on the <i>Monks</i> plaintiffs' lot in Zone 2 in the future will be required to connect to either the existing sanitary sewer system or to an approved holding tank system if the sanitary sewer system is not available at the time of building permit issuance. In such cases, if the sanitary sewer system later becomes available, the holding tank system shall be removed and a connection made to the sanitary sewer system. With these requirements, any geology/soils impacts related to septic systems will be less than significant.</p>					
<p>7. GREENHOUSE GAS EMISSIONS. Would the project:</p>					
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?				X	
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?				X	
<p>Comments:</p> <p>a) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Based upon data obtained from <i>CoolCalifornia.org</i>, the average California household generates thirty-eight (38) tons of carbon dioxide (CO₂) emissions annually. For the proposed project, this could result in increased CO₂ output of at least 608 tons per year at the complete build-out of the <i>Monks</i> plaintiffs' lots in Zone 2. Currently, there are no generally-accepted significance thresholds for assessing greenhouse gas (GHG) emissions. However, the potential, future development of residences on the <i>Monks</i> plaintiffs' lots in Zone 2 would include features that tend to offset the carbon footprint of their development. For example, the use of water would continue to be carefully controlled within the Landslide Moratorium Area in the interest of minimizing the infiltration of groundwater as a means to enhance soil stability. Reducing the use of water reduces energy use related to the transport of water. New</p>					

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<p>residences would be constructed to the most current energy efficiency standards of the current Building Code (i.e., Title 24). The development of new homes on the <i>Monks</i> plaintiffs' lots in Zone 2 would tend to counteract the negative effects of sprawl by "in-filling" an established residential neighborhood rather than converting raw land to urban use. For all of these reasons, the GHG emissions associated with the proposed project would be less than significant.</p> <p>b) California's major initiatives for reducing climate change or greenhouse gas (GHG) emissions are outlined in Assembly Bill 32 (signed into law in 2006), a 2005 Executive Order and a 2004 Air Resources Board (ARB) regulation to reduce passenger-car GHG emissions. These efforts aim at reducing GHG emissions to 1990 levels by 2020 (a reduction of approximately 30 percent) and then an 80-percent reduction below 1990 levels by 2050. Currently, there are no adopted plans, policies or regulations for the purpose of reducing GHG emissions for the development of new, single-family residences. However, as such plans, policies and regulations are adopted in the future, the development of new homes on the <i>Monks</i> plaintiffs' lots in Zone 2 would be subject to and consistent with them. For this reason, the GHG emissions associated with the proposed project would be less than significant.</p>					
<p>8. HAZARDS & HAZARDOUS MATERIALS. Would the project:</p>					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X	
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X	
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	8				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	12				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	8				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	8				X

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g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	13			X	
h) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	9		X		
<p>Comments:</p> <p>a-b) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Said potential, future development could also involve up to 800 cubic yards of grading. No hazardous materials or conditions are known or expected to exist on any of the <i>Monks</i> plaintiffs' lots in Zone 2. The potential, future development of these lots is expected to utilize conventional, residential construction methods and materials that would not involve the use or transport of hazardous materials. Therefore, the hazards and hazardous materials impacts of the proposed project are expected to be less than significant.</p> <p>c) The nearest school in the vicinity of the <i>Monks</i> plaintiffs' lots in Zone 2 is the Portuguese Bend Nursery School at Abalone Cove Shoreline Park. At its closest point, Zone 2 is approximately one-third (1/3) of a mile from the nursery school.</p> <p>d) None of the <i>Monks</i> plaintiffs' lots in Zone 2 are included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.</p> <p>e-f) The <i>Monks</i> plaintiffs' lots in Zone 2 are not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.</p> <p>g) In 2004, the cities of Rancho Palos Verdes and Rolling Hills Estates adopted a Joint Natural Hazards Mitigation Plan (JNHMP). The purpose of the JNHMP is "to promote sound public policy designed to protect citizens, critical facilities, infrastructure, private property, and the environment from natural hazards." The approval of the proposed project is not incompatible with the purpose of the JNHMP.</p> <p>h) Based upon the most recent maps prepared by the California Department of Forestry and Fire Protection (CalFire), the entire Palos Verdes Peninsula is within a Very High Fire Hazard Severity Zone. The <i>Monks</i> plaintiffs' lots in Zone 2 are generally interspersed between developed lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The Zone 2 area does abut City- and privately-owned open areas to the north and west. Therefore, in order to reduce the wildfire hazard impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:</p> <p><u>HAZ-1:</u> New, single-family residences and related accessory structures shall be designed to incorporate all fire protection requirements of the City's most recently adopted Building Code, to the satisfaction of the Building Official.</p>					
<p>9. HYDROLOGY/WATER QUALITY. Would the project:</p>					
a) Violate any water quality standards or wastewater discharge requirements?			X		

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b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?					X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X		
d) Substantially alter the existing drainage pattern of the site or area including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?			X		
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X		
f) Otherwise substantially degrade water quality?			X		
g) Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate map or other flood hazard delineation map?	8				X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	8				X
i) Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	8				X
j) Inundation by seiche, tsunami, or mudflow?	8				X
Comments: a, c-f) The potential, future development of up to sixteen (16) single-family residences would alter the topography of the <i>Monks</i> plaintiffs' lots in Zone 2 and increase the amount of impermeable surface area. However, the approval of the					

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<p>proposed project will not directly grant any entitlement to develop these lots. Potential, future development will result in changes to the current drainage patterns of the area, as well as the potential for erosion and run-off during construction. The <i>Monks</i> plaintiffs lots in Zone 2 fall within or adjacent to a designated Environmentally Sensitive Area (ESA) that would require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant for any project involving the creation of two thousand five hundred square feet or more ($\geq 2,500$ SF) of impervious surface. Therefore, in order to reduce the hydrology/water quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:</p> <p>HYD-1: Any development proposal located within, adjacent to or draining into a designated Environmentally Sensitive Area (ESA) and involving the creation of two thousand five hundred square feet or more ($\geq 2,500$ SF) of impervious surface shall require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant prior to building permit issuance.</p> <p>HYD-2: If lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant.</p> <p>HYD-3: Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.</p> <p>HYD-4: All landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.</p> <p>b) The potential, future development of up to sixteen (16) single-family residences will not involve or require the withdrawal of groundwater because water service to these properties will be provided by the California Water Service Company.</p> <p>g-h) There are no Federally-mapped 100-year flood hazard areas in the City of Rancho Palos Verdes.</p> <p>i) There is no dam or levee anywhere in the vicinity of the <i>Monks</i> plaintiffs' lots in Zone 2.</p> <p>j) The <i>Monks</i> plaintiffs' lots in Zone 2 do not adjoin an ocean, lake or other body of water, so there is no risk of inundation by seiche, tsunami or mudflow. Furthermore, the lowest elevation of any portion of any undeveloped lot in Zone 2 is roughly 260 feet above mean sea level (MSL).</p>					
10. LAND USE/PLANNING. Would the project:					
a) Physically divide an established community?	8, 2				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	1, 2				X
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?	6		X		
Comments:					
<p>a) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. These lots are interspersed with the sixty-four (64) developed lots and the thirty-one (31) other undeveloped lots in Zone 2. The development of the <i>Monks</i> plaintiffs' lots would not divide the <i>Portuguese Bend</i> community; rather, they would constitute "in-fill" development within the community.</p>					

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<p>b) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Underlying zoning designations for the <i>Monks</i> plaintiffs' lot in Zone 2 (i.e., RS-1 and RS-2) allow single-family residences as the primary permitted use on the zone.</p> <p>c) See Mitigation Measure BIO-1 above.</p>					
<p>11. MINERAL RESOURCES. Would the project:</p>					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	1				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	1				X
<p>Comments:</p> <p>a-b) There are no mineral resources known or expected to exist on the <i>Monks</i> plaintiffs lots in Zone 2. In addition, although the approval of the proposed project will not directly grant any entitlement to develop these lots, the approval of the proposed project would also only permit shallow surface excavations less than five feet (5'-0") in depth.</p>					
<p>12. NOISE. Would the project result in:</p>					
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	1			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X		
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project expose people residing or working in the project area to excessive noise levels?	8				X

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f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	8				X
<p>Comments:</p> <p>a) The City of Rancho Palos Verdes does not have a noise ordinance. However, General Plan Noise Policy No. 5 "[requires] residential uses in the 70 dB(A) location range to provide regulatory screening or some other noise-inhibiting agent to ensure compliance with the noise ordinance." The Noise Levels Contour diagram in the General Plan does not depict the <i>Monks</i> plaintiffs' lots in Zone 2 falling with a 70 db(A) noise contour. Therefore, noise impacts upon future residents are expected to be less than significant.</p> <p>b-d) The approval of the proposed project could result in a cumulative total of 800 cubic yards of grading and the construction of sixteen (16) single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The addition of up to sixteen (16) new residences will increase ambient noise levels in the area as a result of household and vehicle noise. The large lot sizes in the area (i.e., averaging an acre in size) and the presence of existing mature foliage along the private rights-of-way will serve as buffers to the "operational" noise associated with new residences. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related noise and vibration impacts upon nearby sensitive receptors, such as existing single-family residences in Zone 2. Therefore, in order to reduce the construction noise impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:</p> <p>NOI-1: Permitted hours and days for construction activity are 7:00 AM to 7:00 PM, Monday through Saturday, with no construction activity permitted on Sundays or on the legal holidays specified in Section 17.96.920 of the Rancho Palos Verdes Municipal Code without a special construction permit.</p> <p>e-f) The <i>Monks</i> plaintiffs' lots in Zone 2 are not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.</p>					
<p>13. POPULATION/HOUSING. Would the project:</p>					
a) Induce substantial growth in an area either directly (e.g., by proposing new homes or businesses) or indirectly (e.g., through extension of roads or other infrastructure)?	14			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	8				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	8				X
<p>Comments:</p> <p>a) The proposed project could result in the construction of up to sixteen (16) new dwelling units. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Based upon the 2009 estimates from the State Department of Finance (DOF) of 2.747 persons per household in the City of Rancho Palos Verdes, these new residences would be expected to accommodate forty-four (44) residents. The DOF estimates the 2009 population of the City of Rancho Palos Verdes as 42,800 persons, so the proposed project would result in an increase of only 0.1%. Furthermore, the most recent Regional Housing Needs Assessment (RHNA) allotment for the City of Rancho Palos Verdes is sixty (60) additional housing units during the period from July 1, 2005 through June 30, 2014. The proposed project could increase the number of housing units in the City, but would not exceed the total units allocated to the City by the Southern California Association of Governments (SCAG) for the current reporting period.</p>					

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<p>Therefore, the population and housing impacts of the proposed project are expected to be less than significant.</p> <p>b-c) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. No existing housing or persons would be displaced as a result of the proposed project.</p>					
<p>14. PUBLIC SERVICES</p>					
<p>a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:</p>					
<p>i) Fire protection?</p>				X	
<p>ii) Police protection?</p>				X	
<p>iii) Schools?</p>				X	
<p>iv) Parks?</p>				X	
<p>v) Other public facilities?</p>				X	
<p>Comments:</p>					
<p>a) The estimated population of the sixteen (16) new residences that could result from the proposed project is forty-four (44) persons, which amounts to only a 0.1% increase in the City's 2009 estimated population of 42,800. This small increase in population is not expected to place significant additional demands upon public safety services (i.e., fire and police) or other public services (i.e., parks, libraries, etc.). As standard requirements of the construction of new residences, applicants will be required to pay fees to the Palos Verdes Peninsula Unified School District (PVPUSD). In addition, the approval of the proposed project will not directly grant any entitlement to develop these lots. Therefore, the public services impacts of the project are expected to be less than significant.</p>					
<p>15. RECREATION</p>					
<p>a) Would the project increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</p>				X	
<p>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?</p>					X
<p>Comments:</p>					
<p>a) The proposed project is expected to potentially increase the City's population by forty-four (44) persons. Although this amounts to only a 0.1% population increase (based upon 2009 estimates), additional residents will place some additional demands on the City's recreational facilities. However, the approval of the proposed project will not</p>					

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directly grant any entitlement to develop these lots. Therefore, these impacts upon the use of recreational facilities are expected to be less than significant.					
b) The proposed project would not include or allow for the development of recreation facilities, based upon the underlying zoning of the <i>Monks</i> plaintiffs' lots in Zone 2.					
16. TRANSPORTATION/TRAFFIC. Would the project:					
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	7			X	
b) Exceed either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	7			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?					X
d) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?					X
e) Result in inadequate emergency access?	13				X
f) Result in inadequate parking capacity?	11				X
g) Conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?					X
Comments:					
<p>a-b) Based upon the current 7th Edition ITE Trip Generation Manual (Land Use 210, Single-Family Detached Housing, pp. 268-304), the development of sixteen (16) new single-family residences on the <i>Monks</i> plaintiffs' lots in Zone 2 is expected to result in one hundred fifty-three (153) additional average daily trips, thirteen (13) additional AM peak-hour trips and sixteen (16) additional PM peak-hour trips. The City's project thresholds for potentially significant traffic impacts are projects expected to generate more than five hundred (500) average daily trips and/or more than fifty (50) peak-hour trips. With respect to construction traffic, the sixteen (16) undeveloped lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since the subject lots are owned by numerous individual owners, they are very unlikely to be developed concurrently, but rather on a piecemeal basis over a period of many years. Furthermore, the approval of the proposed project will not directly grant any entitlement to develop these lots. Therefore, the transportation/traffic impacts of the project are expected to be less than significant.</p>					
<p>c) The proposed project could result in the development of up to sixteen (16) new, single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The construction of these residences will have no impact upon air traffic patterns.</p>					

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<p>d-e) The proposed project does not include any modifications to existing public or private rights-of-way or changes in current land-use patterns that would create or increase hazardous conditions or hamper emergency access in and to Zone 2 and the <i>Portuguese Bend</i> community.</p>					
<p>f) Pursuant to Section 17.02.030.E of the Rancho Palos Verdes Municipal Code, new single-family residences are required to provide enclosed, off-street parking for two (2) vehicles for residences with less than five thousand square feet (<5,000 SF) of living area, and for three (3) vehicles for residences with five thousand square feet or more (≥5,000 SF) of living area. Although the approval of the proposed project will not directly grant any entitlement to develop these lots, new residences on the <i>Monks</i> plaintiffs' lots in Zone 2 will be required to provide sufficient off-street parking to meet these requirements.</p>					
<p>g) Given the semi-rural character of the area, there are no adopted policies, plans, or programs supporting alternative transportation that include the <i>Monks</i> plaintiffs' lots in Zone 2 and/or any abutting public or private rights-of-way.</p>					
<p>17. UTILITIES/SERVICE SYSTEMS. Would the project:</p>					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	15, 10		X		
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X	
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	15, 10		X		
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X	
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X	

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Comments:					
<p>a-c, e) The City has constructed a sanitary sewer system that serves the <i>Monks</i> plaintiffs' lots in Zone 2 and other areas of the <i>Portuguese Bend</i> community (i.e., the Abalone Cove Sewer System). The purpose of constructing the Abalone Cove system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal of slowing or stopping land movement. According to the EIR prepared for the project, the Abalone Cove system was originally intended to serve one hundred ten (110) developed and forty-six (46) undeveloped lots in the Abalone Cove area or the <i>Portuguese Bend</i> community, which includes the <i>Monks</i> plaintiffs' lots in Zone 2. As such, the potential future development of up to sixteen (16) new residences in Zone 2 should be consistent with the planned sewer system capacity, although the approval of the proposed project will not directly grant any entitlement to develop these lots. The City's Public Works Department has recently confirmed, as a part of the update to the City's Sewer Master Plan, that the Abalone Cove system does have adequate capacity to serve the <i>Monks</i> plaintiffs' lots. Nevertheless, in order to reduce the utilities/service systems impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:</p>					
<p><u>UTL-1:</u> If the Director of Public Works determines that the sanitary sewer system cannot accommodate a new connection at the time of building permit issuance, the project shall be connected to a City-approved holding tank system until such time as the sanitary sewer system can accommodate the project. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the sanitary sewer system.</p>					
<p><u>UTL-2:</u> If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the City's Building Official. For the purposes of this mitigation measure, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after July 6, 2000, additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of the Rancho Palos Verdes Municipal Code, or by an agreement or condition of project approval.</p>					
<p><u>UTL-3:</u> If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the City. Such covenant shall be submitted to the Director prior to the issuance of a building permit.</p>					
<p><u>UTL-4:</u> If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the City a sewer and storm drain easement on the subject property, as well as any other easement required by the City to mitigate landslide conditions. Such covenant shall be submitted to the Director prior to the issuance of a building permit.</p>					
<p><u>UTL-5:</u> If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of a moratorium exception permit.</p>					
<p>d) California Water Service Company (Cal Water) provides the City's water service. Given that the proposed project could potentially increase the number of households and persons in the City by only 0.1%, the increase in demand for water attributable to this project is expected to be minimal compared to the amount of water used in the Cal</p>					

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Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>Water service area. In addition, the approval of the proposed project will not directly grant any entitlement to develop these lots. Individual property owners would be responsible for connecting to existing water-distribution facilities in the area, including the costs of making such connections. As such, the water supply impacts of the proposed project are expected to be to less-than-significant.</p> <p>f-g) The proposed project could result in the construction of up to sixteen (16) new dwelling units, which equates to only a 0.1% increase in the number of dwelling units in the City (based upon 2009 estimates). The <i>Monks</i> plaintiffs' lots in Zone 2 have access to solid waste disposal services through existing City contracts with residential waste haulers. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Given the limited potential scope of the proposed project, the solid waste disposal impacts are expected to be less-than-significant.</p>					
<p>18. MANDATORY FINDINGS OF SIGNIFICANCE.</p>					
<p>a) Does the project have 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?</p>			X		
<p>Comments: The proposed project, with mitigation, will not 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. The proposed project will not eliminate important examples of the major periods of California history or pre-history.</p>					
<p>b) Does the project have impacts that are individually limited, but cumulatively considerable?⁴</p>			X		
<p>Comments: The proposed project could result in the development of up to sixteen (16) new, single family residences on existing undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. On an individual basis, the development of a single-family residence on an existing lot would not be expected to have any adverse impact upon the environment. While the cumulative effects of the near-simultaneous development of up to sixteen (16) such residences may have significant adverse effects, it should be noted that the sixteen (16) <i>Monks</i> plaintiffs' lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since the subject lots are owned by numerous individual owners, they are very unlikely to be developed concurrently, but rather on a piecemeal basis over a period of many years. Furthermore, with the imposition of the recommended mitigation measures, these potential cumulative impacts will be reduced to less-than-significant levels.</p>					
<p>c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</p>				X	

⁴ "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.

Environmental Checklist
Case No. ZON2009-00007
August 10, 2009

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>Comments: As discussed above, all potentially-significant environmental effects of the proposed project can be mitigated to less-than-significant levels. Therefore, the proposed project will have no substantial adverse effects on human beings, either directly or indirectly.</p>					
<p>19. EARLIER ANALYSES.</p>					
<p>Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or Negative Declaration. Section 15063 (c) (3) (D). In this case a discussion should identify the following items:</p>					
<p>a) Earlier analysis used. Identify and state where they are available for review.</p>					
<p>Comments: A Supplemental Environmental Impact Report (SEIR) was prepared for the Abalone Cove Sewer System in 1996. A supplement to the SEIR was subsequent prepared in 1998. Copies of these documents are available for review at the Public Works Department of the City of Rancho Palos Verdes, 30940 Hawthorne Boulevard, Rancho Palos Verdes, CA 90275. These documents were utilized as source of background data related to the installation of the Abalone Cove Sewer System, but not as a basis for the analysis of the environmental impacts of the proposed "Zone 2 Landslide Moratorium Ordinance Revisions."</p>					
<p>b) Impacts adequately addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.</p>					
<p>Comments: Not applicable.</p>					
<p>c) Mitigation measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions of the project.</p>					
<p>Comments: Not applicable.</p>					
<p>Authority: Public Resources Code Sections 21083 and 21087. Reference: Public Resources Code Sections 21080 (c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 321094, 21151; <i>Sundstrom v. County of Mendocino</i>, 202 Cal. App. 3d 296 (1988); <i>Leonoff v. Monterey Board of Supervisors</i>, 222 Cal. App. 3d 1337 (1990).</p>					
<p>20. SOURCE REFERENCES.</p>					
1	City of Rancho Palos Verdes, <u>Rancho Palos Verdes General Plan</u> , and associated Environmental Impact Report. Rancho Palos Verdes, California as amended through August 2001.				
2	City of Rancho Palos Verdes Zoning Map				
3	South Coast Air Quality Management District. <u>CEQA AIR Quality Handbook</u> . Diamond Bar, California: November 1993 (as amended).				
4	Official Maps of Seismic Hazard Zones provided by the Department of Conservation of the State of California, Division of Mines and Geology				
5	City of Rancho Palos Verdes Archeology Map.				
6	City of Rancho Palos Verdes, <u>Natural Communities Conservation Plan</u> . Rancho Palos Verdes, California as adopted August 2004				
7	Institute of Traffic Engineers, <u>ITE Trip Generation</u> , 7 th Edition.				

Environmental Checklist
Case No. ZON2009-00007
August 10, 2009

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
8	City of Rancho Palos Verdes Geographic Information System (GIS) database and maps				
9	State of California, Department of Forestry and Fire Protection, <u>Very High Fire Hazard Severity Zone Maps</u> . Sacramento, California, accessed via website, March 2008				
10	Email correspondence with Senior Engineer Ron Dragoo (February 5, 2009)				
11	City of Rancho Palos Verdes Municipal Code				
12	Hazardous Waste and Substances Site List (i.e., "Cortese List")				
13	Cities of Rancho Palos Verdes and Rolling Hills Estates Joint Natural Hazards Mitigation Plan				
14	City of Rancho Palos Verdes General Plan Housing Element				
15	Abalone Cove Sewer System Supplement Environmental Impact Report				

ATTACHMENTS:

Mitigation Monitoring Program

From: yogesh goradia [mailto:y_goradia@hotmail.com]
Sent: Sunday, August 30, 2009 3:50 PM
To: kitf@rpv.com
Subject: Zone 2, Portugese Band

I have been living in RPV for over 30 years and happen to own an undeveloped lot in the zone 2 area of Portugese Band.

I attended a preliminary meeting a few months ago that dealt with various issues if the existing moratorium was lifted as a result of the Appeals court decision on the Monks vs. RPV lawsuit. I do not recall any mention at that meeting of the proposed option in your Notice of August 10 (which I just received!) that would only lift the moratorium on the 16 Monks lots. It is only reasonable to assume that the court intended the decision to apply to the entire Zone 2 and not just the 16 Monk lots. The city's current proposal amounts to saying "sue the city if you want to lift the moratorium on your zone 2 lot!"

What I would propose is (1) lift the moratorium on all the 47 lots in zone 2 (2) then, if the City wants to exclude any particular lot, let it present the arguments as to why that lot should be excluded. The present proposal is grossly unfair to the owners of the 31 excluded lots and I am afraid it might invite further litigation.

Yogesh Goradia

From: "Kit Fox" <kitf@rpv.com>
Sent 8/31/2009 8:03:44 AM
To: "Carla Morreale" <carlam@rpv.com>
Subject: FW: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Late Correspondence on Zone 2

Kit Fox, AICP
Associate Planner
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
T: (310) 544-5228
F: (310) 544-5293
E: kitf@rpv.com

-----Original Message-----

From: Jeremy Davies [mailto:jdavies@kubooa.com]
Sent: Sunday, August 30, 2009 11:48 AM
To: clark@rpv.com; stevew@rpv.com; tom.long@rpv.com; douglas.stern@rpv.com; kendyda@rpv.com
Cc: joelr@rpv.com; kitf@rpv.com
Subject: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Council members Long, Stern and Dyda,

I respectfully submit the following comments on the proposed revised MND in recognition that the City is attempting to balance the difficult position into which it has been placed following the "Monks" Appellate Court decision. I also incorporate by reference my comments included in my letter to Council of February 25 in as much as detailed concerns in that letter have not been addressed in the revised MND.

1) I believe that a full EIR is required in accordance with CEQA requirements BEFORE project development and that such EIR must include not only the Monks lots but all lots in Zone 2 that may be developed. A segmented MND is neither adequate nor acceptable for fairness to both the existing homeowners and the lot owners. I endorse Staff's recommendation for a full EIR contained in their staff report dated June 2, 2009. No adequate reason has been provided to deny staff's recommendation.

1 of 2

13-59/3

2) By separating out the Monks lots, which are not contiguous, into a separate project without a full impact EIR, any future EIR for the remaining 31 undeveloped lots (and potential other developments-see 4 below) considered by the City will be inappropriately distorted.

3) The EIR must be tailored to address the unique characteristics of Zone 2 and the contiguous zones, particularly as they relate to transportation, road access conditions and hydrology conditions and mitigation recommendations-it cannot be a "cookie cutter" EIR. Input from geological specialists and other specialists and the PBCA Community should be required for the EIR design.

4) The EIR must take into account additional potential subdivisions and developments in or adjacent to Zone 2 for which the City has already been advised in writing (some of this potential development is alluded to in Item 10 of the revised MND).

5) The revised MND states that the Public Works Department has now concluded that the sewer system does have adequate capacity to serve the Monks lots. What were the assumptions used in terms of residence size, # of bathrooms etc. (the average size of existing homes in Zone 2 is probably less than 3,000sq ft)?

Yours sincerely
Jeremy Davies

From: Marianne Hunter [mailto:2hunter@cox.net]
Sent: Monday, August 31, 2009 11:25 AM
To: City Council
Cc: joelr@rpv.com; kitf@rpv.com
Subject: EIR not MND for Zone 2

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Councilmen Long, Stern and Dyda

I'm writing to voice my concern over a MND rather than a full EIR in Zone 2. Relating to 16 lots separately rather than the total affect of the 47 lots (plus potential subdivisions) and the wild west effect of tear-down and rebuild of existing homes once the door is open, is a potential disaster.

Roads in present condition are inadequate

Affect on Hydrology of the area has not been studied

Safety during emergencies (brought home this week) has not been studied

Best science for building on the landslide has not been determined for the safety of the new family and the neighborhood they are joining.

We need a complete EIR of at least Zone 2 to determine if and how building can be safely done without threat to any. The rush created by *Monks et al* is because we all (the City, PB residents and Monks) know that the needed study data is not yet available and the answers may prove restrictive or cost prohibitive when done. To say we can fix problems after the fact (problems we may not even be aware of now) when big problems we have known of for years such as the severely eroding canyon remain untended, would be irresponsible and reckless.

We must be smart, follow CEQA rules and have our plan BEFORE we move ahead, not after.

Sincerely,

William Hunter

From: Marianne Hunter [mailto:2hunter@cox.net]
Sent: Monday, August 31, 2009 11:24 AM
To: City Council
Subject: FW: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Subject: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Councilmen Stern, Long and Dyda;

We understand that the City is in a difficult position vis-à-vis the MONKS Appellate Court decision and the ability of the City to act in the best interests of it's future and ours.

We believe that in order to be in compliance with CEQA the City MUST have a complete EIR of all lots in Zone 2 before any project development in it is permitted. Our City staff has recommended a full EIR, and no reasonable argument has been put forward to deny that recommendation.

Allowing a MND of some lots, positioned among homes and other lots, does not address reality. It opens the door, not only in Portuguese Bend but elsewhere in the City, for developers to use this as precedent for avoiding the expense of study/mitigation of safety issues. This opens the City to lawsuit and citizens to potential harm.

Another repercussion of an MND for these disconnected lots is the impact on future full EIR data: we understand that those 16 lots, which would have had only the MND, would then be excluded from inclusion in any future EIR, thus skewing a true report.

We will not accept a piecemeal, incomplete band-aid approach as a true evaluation of the highly fragile stability and other limitations of this area. Zone 2 is NOT an island; it is connected to, dependant upon and has an affect upon the zones surrounding it where people live, where people travel, where utilities are run. Only a complete EIR can evaluate the roads, drainage, slide factors, emergency access etc. This can be done only with independent experts in each field and including the local fire department; ACLAD; GHAD and experienced resident witnesses. Anything less does not fulfill the duty of the City to reasonably provide for the safety of all of its residents and those traveling through it. Using only select snapshots as a guide, the City does not have all the information to make sound judgments. For example: Public Works has put forward that the current sewer system is adequate for development of the 16 Monks lots. What was/was not taken into consideration for that conclusion? Has the number of bathroom/bedrooms allowed been defined? Was the fact that the sewer lines outside PB on PV Drive South failed twice in the last year (including last week) taken into consideration?

If only an MND is required and a failure causes harm, all of RPV's citizens will be liable for the costs of judgments from lawsuits against the City.

We believe that only a complete EIR can address the reasonable possibility of developing the Monks lots and the sub-divisions and single lots that are already waiting in the wings to develop in and around Zone 2.

Again, these lots and Zone 2 are not islands and it is not reasonable or responsible of the City to treat them as if they are.

Thank you for taking this into consideration.

Sincerely,

William and Marianne Hunter, Portuguese Bend

From: Carolynn Petru [carolynn@rpv.com]
Date: Monday, August 31, 2009 3:54 PM
To: terit@rpv.com
Cc: 'Toni Harris'; 'Kit Fox'
Subject: FW: City Council meeting 9/1/09

From: Stuart Miller [mailto:stuartmiller@earthlink.net]
Sent: Monday, August 31, 2009 3:30 PM
To: Carolyn Lehr
Subject: City Council meeting 9/1/09

Dear Ms. Lehr:

I am one of the attorneys for the *Monks* plaintiffs. Please add my name to those who wish to speak at the City Council meeting tomorrow night regarding the proposed revisions to the Landslide Moratorium Ordinance. Because there may be community opposition to the proposal, I request that I be scheduled toward the end of the public comment period so I will have an opportunity to clarify any misconceptions about the case expressed to the Council.

Thank you very much.

Sincerely,

Stuart Miller

stuartmiller@earthlink.net

From: Gordon Leon [mailto:gordon.leon@gmail.com]
Sent: Monday, August 31, 2009 10:07 PM
To: Joel Rojas; citymanager@rpv.com; cc@rpv.com; Cassie Jones
Subject: Comments regarding NMD for 9/2 City Council Meeting

To: Director of Planning and City Council

August 31, 2009

From: Gordon Leon

Subject: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

I would like to reiterate my letter of March 1st. The city's new plan to use a NMD for the 16 Monk lots and an EIR for the remaining Zone 2 lots does not address the fundamental issues associated with development in Portuguese Bend. Furthermore, it relieves the 16 lots from any mitigations that might be found necessary in a subsequent EIR. This is why CEQA does not allow projects to be approved piecemeal.

The Portuguese Bend residents are very concerned about the stability of their homes, when development in Zone 2 and any similar areas is allowed. The Portuguese Bend landslide stability is a fragile equilibrium. Over the past 30 years, it has been preserved by controlling ground water by the Abalone Cove Landslide Abatement District pumping an average of 300,000 gallons of water a day and limitations on development due to the building moratorium. While the appellate court decision requires issuance of building permits or compensating to lot owners, it also requires the city to coordinate a set of building guidelines (restrictions) with the lower court. The existing residents are at risk if the new development aggravates the landslide.

I support staff's recommendation to establish a 5 member advisory committee to work with planning to develop building restrictions. I recommend that the committee include Bob Douglas or another geologist who is knowledgeable about the Portuguese Bend Landslide, a member recommended by the Portuguese Bend Community Association to represent the residents, a member to represent the lot owners, a structural engineer experience in building in active landslides, and a lawyer experience in zoning and land use in geologically hazardous areas.

The Negative Mitigation Declaration (NMD) is inadequate to address the issues associated with the removal of the moratorium. I recommend that a comprehensive Environmental Impact Statement (EIR) be performed to provide a thoughtful mitigation of the issues associated with building on the largest active landslide in the United States. The standard NMD does not address the following pertinent issues:

1. The NMD under estimates the volume of development. It asserts that only 47 vacant lots will be developed over an extended period of time. The Monk decision will affect all 111 lots in Zone 2 as well as the geographically equivalent sub dividable adjacent areas. (eg Point View, Vanderlip, and other large lot owners) This will likely add another 100 to 150 lots, so the total

housing units is more likely to be 200-250 units. The moratorium has inhibited re-building and remodeling of existing homes for over 30 years. This pent up demand is likely to result in a large amount of rebuilding as soon as the rules change.

2. **The MND does not adequately address storm water runoff.** The conventional approach is to direct the rainwater into storm drains. The land movement would rupture normal subterranean storm drains so the roads in Portuguese Bend serve that function as they drain into Altamira Canyon. The County of Los Angeles elected not to improve Altamira Canyon, which currently allows storm water run off into the landslide fissures. Significant mitigation is required to accommodate the storm water from roofs and hard scape associate with 200-250 new units. This issue has not been addressed or mitigated in the MND.
3. **The access to the new development in Zone 2 is on roads that traverse the less stable areas of the landslide.** Knowledgeable geologists have said that the vibrations from heavy trucks could likely destabilize the landslides in the more active areas. This will cause damage to houses in Zone 5 and could lead to failure of Narcissa Drive. This issue has not been addressed or mitigated in the MND.
4. **Residents will not be able to access Palos Verdes Drive South.** The traffic on PV Drive South has grown significantly over the past few years and will increase dramatically when the Teranea Resort is opened. It is already difficult to enter at Narcissa Drive and Peppertree Drive. The additional houses will make this situation untenable. The MND does not address or mitigate this issue.
5. **Construction vehicles will block the roads in Portuguese Bend for emergency vehicles.** On street parking is not allowed in PBCA because all of the roads are fire roads. Construction vehicles often park on the streets, creating a safety issue for the existing residents. The MND does not address or mitigate this issue.
6. **Many of the proposed lots are not serviced by fire hydrants, power, water, or sewer.** The MND does not address or mitigate this issue.
7. **Building techniques that improve the stability of a build able lot often have negative impact on adjacent lots.** An example is the compaction ongoing on Cinnamon Lane has caused cracks in the neighboring house. The MND does not address or mitigate this issue.

There are a significant number of issues that are not addressed or mitigated to an insignificant level by the MND. I recommend that a full EIR be performed to allow experts to help formulate the mitigation restrictions to protect the city and the existing residents from destabilization of the landslide by development in Portuguese Bend. I also support the staff's recommendation to form an advisory committee to help in the formulation of guidelines and restrictions to protect the city and residents of Portuguese Bend.

Gordon Leon

Portuguese Bend Resident

Gordon.Leon@gmail.com

310-463-9244

From: Martin Burton [mailto:mburton@gilchristutter.com]
Sent: Monday, August 31, 2009 6:16 PM
To: clark@rpv.com; steview@rpv.com; tom.long@rpv.com; douglas.stern@rpv.com; kendyda@rpv.com
Cc: joelr@rpv.com; kitf@rpv.com; clynch@rwglaw.com
Subject: Objections to MND for Landslide Moratorium Ordinance Revisions; Planning Case No. ZON2007-00007

I have attached a courtesy copy of a letter objecting to the Mitigated Negative Declaration to the proposed Landslide Moratorium Ordinance Revisions. Hard copies, with one set of attachments, will be delivered at tomorrow night's City Council hearing.

Please call me with any questions.

Thank you.

Martin N. Burton, Esq.
Gilchrist & Rutter Professional Corp.
1299 Ocean Avenue, Suite 900
Santa Monica, CA 90401
Tel: (310) 393-4000
Fax: (310) 394-4700

Unless otherwise expressly stated, nothing stated herein is intended or written to provide any tax advice on any matter, and nothing stated herein can be used for the purpose of avoiding tax penalties that may be imposed on a taxpayer.

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August 31, 2009

Via Personal Delivery

Mayor Larry Clark
Mayor Pro Tem Steve Wolowicz
Councilmember Thomas D. Long
Councilmember Douglas W. Stern
Councilmember Ken Dyda
Rancho Palos Verdes City Council

Re: Mitigated Negative Declaration For Zone 2 Landslide Moratorium Ordinance
Revisions Dated August 10, 2009, Planning Case No. ZON2007-00007 (the
"August Mitigated Negative Declaration" or "August MND")
City Council Hearing: Tuesday, September 1, 2009

Dear Mayor Clark, Mayor Pro Tem Wolowicz, and Councilmembers Long, Stern, and Dyda:

This office represents Dr. Lewis A. Enstedt, a resident of the City of Rancho Palos Verdes, and the Portuguese Bend Alliance For Safety, an unincorporated association. We are writing to object to the August Mitigated Negative Declaration as failing to comply with the requirements of the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000, *et seq.* ("CEQA"), and its guidelines, 14 Cal. Code Regs. §§ 15000, *et seq.* (the "CEQA Guidelines") to fully identify, analyze and mitigate the significant environmental impacts arising from the proposed Zone 2 Landslide Moratorium Ordinance Revisions (the "Landslide Revisions" or "Project"). As we urged in our letter to the City Council dated March 3, 2009, which discussed the mitigated negative declaration dated February 9, 2009 (the "February MND" or the "February Mitigated Negative Declaration"), the City Council should reject the August MND and require the preparation of a full environmental impact report ("EIR").

The February MND analyzed proposed Landslide Revisions which would allow for the development of the entire 47 lots at the Project site ("Zone 2" or "Portuguese Bend"). As we advised the City, the February MND was inadequate and a full EIR was required. With City Staff publicly acknowledging the validity of our concerns, the City stopped processing the February MND while it developed and considered several alternatives in preparation for a June 2, 2009 City Council hearing.

One alternative presented by City staff to the Council was to prepare a mitigated negative declaration covering just the 16 lots at issue in *Monks v. City of Rancho Palos Verdes*, 167 Cal. App. 4th 263 (2008) ("*Monks* lots"). Staff concluded, however, that the alternative including only the 16 Monks lots "faces the same legal challenges from the opponents of the current

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[Landslide Revisions, which addresses the development of all 47 lots], as well as those of the owners of the other thirty-one (31) vacant lots in Zone 2, who could claim that their ability to develop should be considered at the same time.” (June 2, 2009 City staff report regarding Planning Case No. ZON2009-00007 at p. 24-6.)

Instead, in the June 2, 2009 staff report, City staff recommended the preparation of an EIR to analyze the impact of the development of all 47 lots at the Project site. At the June 2, 2009 City Council hearing, the City Council directed staff to pursue both approaches: analyze the potential environmental impact resulting from the development of the 16 *Monks* lots, while simultaneously preparing an EIR to analyze the impact of the development of the entire 47 lots and, presumably, other projects planned in the community.

The fact that the City has amended the Landslide Revisions to allow only the development of the 16 *Monks* lots still does not justify the preparation of a mitigated negative declaration rather than a full-blown EIR. In taking both approaches, the City essentially concedes that the entire 47 lots will be developed and that such development requires an EIR.

The City cannot break off a single project, such as the Landslide Revisions, into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole, as it does here by first preparing the August MND to analyze the development of the *Monks* lots and later conducting a full-blown EIR to analyze the impact of the development of the entire 47 lots at the Project site. (*Orinda Ass'n v. Board of Supervisors*, 182 Cal. App. 3d 1145, 1171 (1986).) CEQA “cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.” (*Id.*; see also *Ass'n for a Cleaner Env't v. Yosemite Community College Dist.*, 116 Cal. App. 4th 629, 638 (2007); *Lincoln Place Tenants Ass'n v. City of Los Angeles*, 130 Cal. App. 4th 1491, 1507 (2005).)

The attorneys for the 16 *Monks* lot owners, having won a determination that the City's original moratorium on development amounts to a taking, have argued to the City that the 16 *Monks* lot owners are somehow exempt from any further City or state regulation, including CEQA, zoning, and building requirements. The attorneys for the 16 *Monks* lot owners have threatened that if the City attempts to apply ordinary CEQA, zoning, and building and safety restrictions to the 16 *Monks* lots, they will challenge the City's actions as a permanent taking and be entitled to damages for the taking. Thus, the City's two-pronged approach is nothing more than an attempt to appease the lawsuit-threatening 16 *Monks* lot owners and their attorneys in their improper attempts to evade CEQA (hence, the August MND), while silently acknowledging

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that a mitigated negative declaration is simply inappropriate for this Project (hence, the simultaneous preparation of a full-blown EIR for the 47 lots).

The August MND is barely revised from the February MND, which City Staff had publicly acknowledged to be subject to challenge. However, the August MND seeks to shield itself from challenge by claiming throughout that “the approval of the proposed project will not directly grant any entitlement to develop these lots.” The City’s reliance on this argument is misplaced. The scope of review under CEQA is not confined to immediate effects but extends to reasonably foreseeable indirect physical changes to the environment. (Pub. Res. Code § 21065; 14 Cal. Code Regs. § 15378(a).) CEQA applies to the reasonably foreseeable environmental impacts that will ultimately result from the proposed project. (*See, e.g. Bozung v. LAFCO*, 13 Cal. 3d 263, 277 (1975) (holding annexation plan was a project because its ultimate effect would be to permit subdivision and development of land that had been in agricultural use).) Attorneys for the Monks lot owners have stated openly their clients intend to develop their lots as soon as possible. The fact that the lots at the Project site will be entitled and developed after the Landslide Revisions are adopted is clearly a reasonably foreseeable effect and must be considered in an environmental review of the Landslide Revisions. The Landslide Revisions commit the City to a course of conduct that will ultimately result in the development of all 47 lots.

As we advised the City in our letter to the City Council dated March 3, 2009, CEQA establishes a low threshold for requiring the preparation of an EIR. (*See Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322 (2005) (“*Mejia*”).) If substantial evidence supports a fair argument that a proposed project may have a significant impact on the environment, an EIR must be prepared. (*No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68 (1974).) Any doubts about whether to engage in the lesser environmental review of an MND and the greater environmental review of an EIR are resolved in favor of the latter. (*Id.*) Given the potential significant environmental impacts of the Project, and the inadequacies of the proposed “mitigation” measures, an EIR and not a mitigated negative declaration is required to study the direct and indirect environmental effects of the Landslide Revisions. Failure to prepare a full-blown EIR in connection with the Landslide Revisions will constitute a violation of CEQA and its Guidelines, and will subject the City to costly litigation.

A mitigated negative declaration can be adopted only if the project’s effects can be mitigated to the extent that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Res. Code § 21080(c); 14 Cal. Code Regs. 15063(b)(2), 15064(f)(2) – (3), 15070.) Where there is substantial evidence that the project may have a

Mayor Larry Clark
Mayor Pro Tem Steve Wolowicz
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significant effect on the environment, as there is here, a full EIR is required. (14 Cal. Code Regs. §§ 15063(b)(1), 15064(f)(1).) The courts have often found that where regulation could result in development, an EIR is required to adequately evaluate the significant environmental impacts which may result from the development. (*See, e.g., City of Livermore v. LAFCO*, 184 Cal. App. 3d 531 (1986) (requiring EIR for revisions to guidelines because change in policies could affect location of development, resulting in significant environmental impacts).)

Here, we advised the City in our letter dated March 3, 2009 that there is substantial evidence that the Landslide Revisions may result in the development of more than 47 new residences which may have a significant effect on the environment that cannot be mitigated. The City never issued a point by point response to the issues and objections raised in the March 3, 2009 letter. Indeed, the City failed to address the issues and objections raised in our March 3, 2009 letter altogether. Instead, the City conceded that an EIR would be necessary to study the impact of the future development of 47 lots, but, in order to expedite development on the *Monks* lots, improperly narrowed the scope of review in the August MND to only 16 lots to justify the preparation of a mitigated negative declaration rather than an EIR. However, even the development of the 16 lots at issue in the *Monks* action requires the preparation of an EIR. Moreover, the City is legally obligated to review the environmental impacts resulting from the development of all 47 lots. The City must consider the whole of the action and cannot divide a single project, such as the Landslide Revisions, into smaller individual subprojects to avoid responsibility. (*Orinda*, 182 Cal. App. 3d at 1171; *Ass'n for a Cleaner Env't*, 116 Cal. App. 4th at 638; *Lincoln Place Tenants Ass'n*, 130 Cal. App. 4th at 1507.) Accordingly, the August MND, which fails to address any of the flaws in the February MND, is wholly inadequate and the City must prepare an EIR if it intends to allow for any development of new residences in Zone 2.

As we already noted in our March 3, 2009 letter, the February Mitigated Negative Declaration was fundamentally flawed for at least three reasons, none of which have been addressed by the City in any responses to comments on our March 3, 2009 letter, or in the August MND. First, the February Mitigated Negative did not accurately represent the scope of the Landslide Revisions' impact on the Project site. Particularly is this true given the small and semi-rural nature of the Portuguese Bend community. The CEQA Guidelines call for the lead agency to exercise "careful judgment" when determining whether an impact is significant or not, as "an activity which may not be significant in an urban area may be significant in a rural area." 14 Cal. Code Regs. §15064(b).

Second, the February MND did not take into account the likely subdivision, or lot-splitting, of undeveloped lots to create even more homes, which it should have done as, under

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California law, the City's environmental review of the Project must include reasonably foreseeable consequences of the Project that will significantly change the scope or nature of the Project or its environmental effects. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of California*, 47 Cal. 3d 376 (1988).)

Third, the February Mitigated Negative did not analyze the cumulative impacts of simultaneous, or near-simultaneous, construction – from the 47 lots or from surrounding projects. The February MND instead made the flawed assumption that “[s]ince the subject lots are owned by numerous individual owners, they are very unlikely to be developed concurrently, but rather on a piecemeal basis over a period of many years.” (February MND at p. 23.) This assumption ignored the fact that the owners of some or all of the undeveloped lots have been attempting to develop these lots for over thirty (30) years, since the City first enacted a moratorium on the construction of new homes in the Project site, and now that the City is attempting to lift restrictions on development, it is certainly reasonably foreseeable that these lots will undergo construction as soon as feasible, if not by the existing lot owners, then by their successors. Even if development is piecemeal, it is still development and its cumulative impacts must be analyzed.

The City amended the Landslide Revisions to only allow for the development of the 16 lots at issue in the *Monks* action. Consequently, the August MND only analyzes the impact from the development of the 16 *Monks* lots and emphasizes throughout its pages that “the approval of the proposed project will not directly grant any entitlement to develop these lots.” However, in amending the Landslide Revisions to only allow for the development of 16 lots, and consequently preparing a MND that only analyzes the impact from the development of those 16 lots, the City impermissibly circumvents CEQA by dividing the Project into smaller subprojects to avoid responsibility for considering the environmental impact of the project as a whole. (*Orinda*, 182 Cal. App. 3d at 1171.) That this is the City's goal is especially clear in light of the fact that the City is simultaneously performing a full-blown EIR to study the impact of the development of the entire 47 lots.

The entitlement and development of the lots are a clearly foreseeable effect of the Landslide Revisions. A governmental decision that is a precursor to development, expanded use, or other impacts is subject to CEQA and such consequences must be analyzed. (*Bozung*, 13 Cal. 3d 263; *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*, 139 Cal. App. 4th 1356, 1379 (2006).)

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The City cannot avoid its legal obligations under CEQA by narrowing the scope of review to only 16 lots and excluding the foreseeable likelihood that the lots will be entitled. Rather, the Landslide Revisions must be considered in light of the possibility that all 47 lots are entitled and developed. And, as we previously advised the City, the assumption that "the future development of up to 47 single-family residences" will either have less than significant impacts or that the impacts can be mitigated premise is fundamentally flawed.

Under California law, if there is substantial evidence to support a fair argument that the proposed project may have a significant impact on the environment, the existence of contrary evidence is insufficient to avoid an EIR. (*See No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68 (1974); *see also Friends of "B" St. v. City of Hayward*, 106 Cal. App. 3d 988, 1002 (1980).) The relevant question is whether the effects of the Project are significant when viewed in connection with past, current, and probable future projects. (14 Cal. Code Regs. § 15065(a)(3).) Here, there is substantial evidence to support a fair argument that the Landslide Revisions, and the likely development of all 47 lots rather than only 16, may have significant effects on the environment that are not mitigated by the measures proposed in the August MND. Therefore, an EIR is required. (*Id.*) Below, we discuss the substantial evidence supporting the necessity of an EIR and analyze the flaws in the alleged "mitigation" measures proposed in the August Mitigated Negative Declaration as they apply to Air Quality, Biological Resources, Geology/Soils, Greenhouse Gases, Hydrology/Water Quality, Population/Housing, Transportation/Traffic, Utilities/Service and Aesthetics. Given the overwhelming evidence that an EIR is required, the City's failure to prepare an EIR in connection with the Project violates CEQA and will result in significant damage to the environment and community.

I. Air Quality

The August Mitigated Negative Declaration alleges that, with mitigation, the Landslide Revisions will have less than significant impacts on air quality. However, as with the February MND, its analysis is focused solely on construction air quality impacts and makes no mention whatsoever of long-term air quality impacts, project-specific and cumulative, arising from increased vehicle trips as a result of the development. The analysis largely depends on the fact that the development of the lots will occur "on a piecemeal basis over a period of many years." (August MND at p. 8.) As discussed above, this assumption underestimates the likelihood that the owners of the undeveloped lots, many of whom have been attempting to develop their lots for over thirty (30) years, will begin construction simultaneously, i.e., as soon as feasible. As discussed above, this assumption is also based on an improperly narrow scope of review which

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analyzes the impact of development on only 16 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

The August Mitigated Negative Declaration provides that if the “worse case” scenario were to occur, and all the lots were developed simultaneously, the mitigation measures provided would still make the air quality impacts less than significant. (*Id.*) However, the only mitigation measures provided are (1) that the applicant “shall be responsible for all dust and erosion control measures required by the Building Official” and (2) that the hours trucks and other construction vehicles are allowed to park, queue and/or idle at the Project site are restricted as provided in the City’s Municipal Code. (*Id.*) Yet, neither one of these measures actually mitigates the effect of construction on the air quality. Nor do they address the cumulative effects of simultaneous construction on the air quality of the Project site, which is semi-rural. The first measure relies on prospective action to be taken by the future applicants and the Building Official, without any evidence of the likelihood of effective mitigation. Such reliance is an unacceptable mitigation measure. (*See Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 308-15 (1988) (disapproving a condition to a negative declaration that required sludge disposal plan to be approved by Regional Water Quality Control Board and the Department of Public Health).) The second measure does not address the possibility of subdivision, or lot-splitting, and environmental effects stemming from the construction of more than 47 new single-family residences, or even the construction of more than 16 new single-family residences, as purportedly addressed in the August MND.

II. Biological Resources

Although the August Mitigated Negative Declaration acknowledges that at least two (2) of the *Monks* lots contain patches of coastal sage scrub (“CSS”) and that several of the undeveloped lots in Zone 2 abut the City-owned Portuguese Bend Reserve and the privately owned Filiorum properties, both of which contain substantial and cohesive patches of sensitive CSS habitat, it fails to analyze any impacts and proposes unacceptable and inadequate mitigation measures. (August MND at p. 9.)

The City cannot delay its analysis to a later date. Instead of actually analyzing and mitigating the impact of the development on the CSS habitat, the August MND, like the February MND, essentially requires implementation of mitigation measures to be recommended in a future study. This is an unacceptable mitigation measure which essentially postpones analysis of the issue. (*See Sundstrom*, 202 Cal. App. 3d at 308-09.) Specifically, the August MND states that applicants for development on lots identified as containing sensitive habitat

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“shall be required to prepare a biological survey ... [which] shall identify the presence or absence of sensitive plant and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species.” (August MND at p. 9.) Where an agency fails to evaluate a project’s environmental consequences, it cannot support a decision to adopt a negative declaration. (*Sundstrom*, 202 Cal. App. 3d at 311.) Here, the August MND fails to evaluate the Project’s environmental consequences with regard to the possible loss of coastal sage scrub, a sensitive plant community, and instead puts the onus on applicants to do so at a later date. Such deferred analysis of mitigation is impermissible.

Furthermore, as we noted in our March 3, 2009 letter, the City fails to evaluate the Project’s possible environmental consequences on sensitive wildlife species in or around the Project site, such as the cactus wren, Cooper’s hawk, Palos Verdes Blue, southern California rufous-crowned sparrow, and coastal California gnatcatcher, all of which may be found in the surrounding areas, if not on the Project site itself. The courts have found that “absent a current biotic assessment, the conclusions and explanations provided [by the lead agency in an initial environmental review] do not preclude the reasonable possibility that birds, including species of special concern and others, may roost or nest on the property, that small mammals may use the property as a movement corridor, and that development of the site and elimination of the corridor may have a significant impact on animal wildlife.” (*Mejia*, 130 Cal. App. 4th at 340.) Here, the existence of sensitive wildlife species in the areas surrounding the Project site suggests that the Project may have significant impact on animal wildlife, thereby meriting further review and analysis in an EIR.

Moreover, the MND does not even consider the possibility of design measures that could preserve habitat for sensitive species on site, but identifies as its only mitigation measure “payment of a mitigation fee.” (MND at p.9.) This is no mitigation but the admission of a potential significant impact.

Lastly, despite the fact that we have brought this issue to the City’s attention in our March 3, 2009 letter, the August MND still fails to address the environmental consequences the Project may have on sensitive inter-tidal species located at the juncture where the Altamira Canyon, situated in Zone 2, drains into the Pacific Ocean at the Abalone Cove Shoreline Park. This juncture is the site of a State Ecological Reserve, a highly sensitive resource. Additional storm water runoff from the Project will carry and deposit silt in this Reserve, significantly harming the sensitive inter-tidal species within this Reserve, yet the August MND does not address this potentially significant impact.

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III. Geology/Soils

The August Mitigated Negative Declaration also fails to adequately evaluate the effect of development on the geology and soil in Zone 2. As the City is aware, geology and soils stability were issues discussed in the *Monks* action. However, although the Court of Appeal ruled the City could not impose an ordinance depriving the *Monks* plaintiffs of all economically beneficial use of the 16 lots at issue, the Court never sought to prevent the full environmental review of the Project pursuant to CEQA or the mitigation of the environmental impact resulting from the foreseeable development of 47 or more lots.

The City cannot simply escape its obligations under CEQA by revising the Project to allow only for the development of the *Monks* lots now and preparing a full-blown EIR analyzing the impact of developing the entire 47 lots, which is clearly reasonable foreseeable, at a later date. Doing so does not negate the fact that the evidence suggests that the development of at least 47 new single-family residences would have a significant effect on the geology and soils at the Project site, which is susceptible to landslides. The *Monks* court cites the City's own expert witness as saying that "allowing construction on *all 47 undeveloped lots* 'would have a tendency to further reduce the factor of safety.'" (*Id.* at 308 (emphasis in original).)

Nevertheless, the August Mitigated Negative Declaration states that there will be less than significant impacts, with mitigation. However, in addition to improperly narrowing the scope of review, the August MND again defers analysis and adopts unacceptable and inadequate mitigation measures, ones that essentially require the implementation of mitigation measures to be recommended in a future study. (*See Sundstrom*, 202 Cal. App. 3d at 308-15.) The August Mitigated Negative Declaration states "given the known and presumed soils condition in and around Zone 2, it is expected that soil investigations...will be required prior to the development of any new residences" and requires that "applicants shall prepare an erosion control plan for the review and approval of the Building Official." (August MND at p. 11-12) These are impermissible attempts to delay the formulation of real mitigation measures to a future date.

The August Mitigated Negative Declaration fails to adequately consider slope stability and possible slope failure during the construction process and thereafter. Instead, the August MND proposes that "applicants shall submit for recordation a covenant agreement to construct the project strictly in accordance with the approved plans." (August MND at p. 12.) This alleged mitigation measure is an empty requirement – one that essentially requires the applicant to agree to construct a project within the parameters of the approved project, which applicants are presumably obligated to do regardless of any covenant agreement.

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The effect of development on the Project site, given the “known and presumed soil conditions in and around Zone 2,” is a highly controversial and complex matter that requires the preparation of an EIR. As the August MND notes, “the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides.” (August MND at p. 11.) Indeed, the August Mitigated Negative Declaration acknowledges “the soils of the Palos Verdes Peninsula are generally known to be expansive and occasionally unstable.” (*Id.*) This is an understatement given the well-known history of landslides within and bordering the Project site.

As we noted in our March 3, 2009 letter, the City already has substantial evidence of the possible environmental effects of construction and development in Zone 2 based on the history of Portuguese Bend and Abalone Cove. In the 1950’s, the Portuguese Bend Landslide destroyed 130 homes. In 1975, a second large landslide occurred, the Abalone Cove Landslide, and resulted in a lawsuit between plaintiff residents and defendants the City, the Rancho Palos Verdes Redevelopment Agency, and the County of Los Angeles. The parties eventually entered into a settlement agreement (the “Horan Settlement Agreement”) wherein defendants agreed to allocate approximately \$10 million to fund landslide abatement work and a maintenance fund. However, these funds were never properly utilized and, although a panel of experts generated several proposals to stabilize the region, including making the two segments of the channel impervious in order to prevent ground water recharge by storm runoffs, grading and sealing ground fissures and depressions in the area, correcting street and culvert drainage, and placing fill along the beach, the City has implemented virtually none to date, and the region remains unstable. In fact, the Abalone Cove Landslide reactivated a few years ago and threatens to reactivate every time there is a heavy rain in the area.

One of the few steps the City has taken to stabilize the land at the Project site was installing “dewatering” wells to remove groundwater and installing a sewer system “to reduce the amount of groundwater” within the area. (*Monks*, 167 Cal. App. 4th at 272; August MND at p. 12.) However, what stability this provided will be jeopardized by any new development. Indeed, a July 2009 draft Abalone Cove Landslide Abatement District Report notes that it is clear that additional dewatering wells are needed just to support the development already at Portuguese Bend. Additional development, as allowed by the Landslide Revisions, would exacerbate the situation in the sensitive region. Furthermore, recent tests indicate that, as a result of the “dewatering” wells, a second slide plane has been discovered at approximately 180 feet below the surface at the Project site. Any new development could clearly affect this deeper slide plane or be affected by this deeper slide plane and result in significant environmental impacts on the geology and soil in Zone 2.

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In addition, although both the February MND and the August MND acknowledge that new residences constructed at the Project site “will be required to connect to either the existing sanitary sewer system or to an approved holding tank system if the sanitary sewer system is not available...” (February MND at p. 12, August MND at p. 12), neither Mitigated Negative Declaration adequately address the significant environmental impacts of connecting these new residences to the sewer system, the possible alternatives beyond temporary holding tanks if the sewer system is unable to handle the new residences, and the likelihood that these new residences and their landscaping plans will increase the amount of groundwater in the area thereby increasing the risk of landslides.

Perhaps most importantly, the MND fails to consider the significant effect the development will have on the two (2) access roads leading into the Project site, which are known to traverse through manifestly unstable areas and are therefore highly sensitive to further burden. Pepper Tree Road passes through the Portuguese Bend landslide area – a known active landslide; and Narcissa Drive cuts across Zone 5, which suffered the Abalone Cove landslide in 1975. The August MND contains absolutely no discussion about the Project’s impact on these highly sensitive streets, the only access ways to the project. Rather, the August MND apparently relies on the fact that it is only analyzing the impact of 16 new single-family residences to deflect these concerns. As discussed above, this is an improperly narrow scope of review. Moreover, even the addition of 16 new single-family residences could have a significant impact on the roads. Portuguese Bend residents must repair and rebuild these access roads, which are paid for by the Portuguese Bend Community Association. The addition of new single-family residences, whether 16 or 47 and more, would increase the burden on the access roads yet the August MND fails to analyze how this increased usage will affect the geology and soils underlying the access roads.

Furthermore, these roads were essentially designed to act as storm drains in the 1940’s but are insufficient now. The exponential increase in the number of cars and the size of homes in the past several decades have drastically impacted the amount of water that accumulates in the area. This problem is exacerbated by the proliferation of new approved developments located upstream, which further increases the amount of water accumulating at the Project site. The nearby Terranea Resort has already caused tremendous strain on the area’s water drainage and geographic stability. The Plumtree development to the northwest of the Project site and the Beanfield development to the southwest of the Project site are each expected to create over 20 additional homes. Two new developments are also expected, one in the northeast of the Project site, near Del Cerro Park and another near Vanderlip Drive. The Landslide Revisions, in conjunction with these new developments, will have a sweeping environmental impact on the

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Project site, which is already known for its geographic instability. Increased impermeable surface from the new homes would increase water to Altamira Canyon with resulting increase in groundwater levels that could further destabilize the Project site. Yet, the August MND fails to analyze any of these impacts.

Lastly, the August Mitigated Negative Declaration does not examine the issue of the Cabrillo earthquake fault, which was identified in another project located only a few miles from Portuguese Bend, and fails entirely to discuss or analyze whatsoever how new development will affect the stability of Zone 5, which experts have acknowledged as unstable and which abuts Zone 2 to the south.

IV. Greenhouse Gas Emissions

The August MND also contains no serious discussion attempting to quantify greenhouse gas emissions or to show with any level of good faith what specific mitigation measures will address those impacts. Scientific accuracy is not required – but a good faith attempt to quantify the impact and address it is required. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs*, 91 Cal.App.4th 1344 (2001).) Instead, the August MND again appears to rely on the fact that it is only analyzing the impact of 16 new single-family residences to deflect these concerns. As discussed above, this is an improperly narrow scope of review and, moreover, does not address the issue.

The August MND implausibly suggests that the “development of new homes on the *Monks* plaintiffs’ lots in Zone 2 would tend to counteract the negative effects of sprawl by ‘in-filling’ an established residential neighborhood rather than converting raw land to urban use” and therefore “the GHG emissions associated with the proposed project would be less than significant.” (August MND at p. 13.) This assertion is utterly without merit as it relies on the faulty premise that the development of the lots in Zone 2 would somehow prevent the conversion of raw land to urban use, which is not the case. Nothing about the Project prevents or counteracts “sprawl.” Instead, the Project allows for increased development in a semi-rural environment. (August MND at p. 6.) Accordingly, the City must seriously consider and quantify the greenhouse gas emissions resulting from this increased development, not deflect the issue by claiming the development somehow offsets “sprawl.”

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V. Hydrology/Water Quality

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on hydrology and water quality, with mitigation. As a preliminary matter, as discussed above, the August MND improperly narrows the scope of review of Hydrology/Water Quality by carving out the 16 *Monks* lots and studying the impact of development on those lots separately from the impact of development on the entire 47 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

Moreover, in evaluating the potential environmental impacts of the Landslide Revisions on hydrology and water quality, the August MND acknowledges that development will "increase the amount of impermeable surface area" yet fails to consider the significant environmental impact of groundwater draining into the Altamira Canyon, which has been designated a sensitive United States Geological Survey "blue line" stream. (August MND at p. 15.) The drainage from Altamira Canyon not only goes near the tide pools, it is within a short distance of a nursery school, the Portuguese Bend Nursery School, which is located near the beach. Altamira Canyon has been subject to severe flooding problems caused by storm water runoff, yet the August MND does not consider whether, or how, the Project may exacerbate an existing deficient storm water drainage system. Furthermore, storm water in Altamira Canyon, which empties into the Pacific Ocean, can create severe beach side erosion causing the shoreline to retreat. This potential significant environmental impact is also ignored in the August MND.

The August MND also does not consider the significant impact of grading and construction activities that have the potential to result in erosion of exposed soils and transportation of sediment into Altamira Canyon. Construction-related and urban-related contaminants may also result in the pollution of runoff waters that would discharge into natural drainage channels. In fact, some of the proposed mitigation measures could exacerbate the problem. For example, the August MND states that "roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course." (August MND at p. 16.) As the panel of experts convened by the Horan Settlement found, such runoff would undoubtedly result in more erosion and the transportation of sediment into Altamira Canyon.

The August MND also fails to analyze the impacts associated with the fact that, pursuant to the City's guidelines, the new single-family residences at the Project site could be 4,000 square feet or more. As residents of Portuguese Bend can attest, this is approximately twice as large as the average home currently in Portuguese Bend. Such new single-family residences

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would drastically increase the amount of water on the surrounding roads and increase the amount of water that would drain into Altamira Canyon.

Although the MND acknowledges that development "would alter the topography...in Zone 2 and increase the amount of impermeable surface area," it proposes inadequate and unacceptable mitigation measures. (August MND at p. 15.) For example, one of the MND's "mitigation" measures provides that "[i]f lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant." (MND at p. 16.) This does not analyze or "mitigate" the environmental effects. Rather, it defers analysis of impacts and mitigation to the future by providing that "lot drainage deficiencies" (and any environmental impact said deficiencies may have) will be identified by the Director of Public Works and mitigated by applicants at a later date.

Similarly, the August MND provides that "[a]ll landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works" (August MND at p. 16) who will presumably review the environmental impacts of said landscaping irrigation systems at a future date and impose mitigation measures as necessary. As discussed above, mitigation measures which impermissibly defer analysis to future review of environmental impacts or which requires implementation measures be recommended in a future study are impermissible.

None of the alleged "mitigation" measures proposed in the August MND are sufficient. As discussed above, as a result of the Horan Settlement Agreement, a panel of experts generated several proposals to stabilize the region, including making the two segments of the channel impervious in order to prevent ground water recharge by storm runoffs, grading and sealing ground fissures and depressions in the area, correcting street and culvert drainage, and/or placing fill along the beach. Any serious environmental analysis needs to consider these proposals and the underlying drainage problems which would be exacerbated by any development.

Drainage studies done of the nearby Altamira Canyon have indicated that the stream bed slopes in the upper reaches of Altamira Canyon undercut the side slopes and create high-velocity, debris-laden flows to lower, more residentially developed area, that the corrugated metal pipe culverts in the area are seriously undersized, inadequate, and in some cases entirely severed, that there is severe downcutting and erosion of the watercourse between Narcissa Drive and Sweetbay Road, and that the type of grass and brush indigenous to the area is not an effective debris retardant and lends itself to brush fires. As evidenced by the recent brush fires, which started on August 27, 2009, the type of grass and brush indigenous to the area is not an

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effective debris retardant, posing significant and dangerous environmental consequences. Development would only worsen those problems. Furthermore, development could decrease the amount of trees and scrub, which are important water extractors, result in an increase in run-off from in both the upper and lower watersheds, trigger creep of the deeper slide plane, increase the amount of sediment and detrimentally affect epibenthic growth, and contribute to massive photoplankton blooms that injure sea life. Yet, the August MND does not discuss or address any of these issues.

VI. Population/Housing

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on population and housing because the Project “would result in an increase of only 0.1% [of the City’s population],” based on a projected 16 new single-family residences. (August MND at p. 18.) However, as discussed above, this reasoning is flawed in that the August MND improperly narrows the scope of review on the issue of Population/Housing by carving out the *Monks* lots and studying the impact of development on those lots separately from the impact of development on the entire 47 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

In fact, it is reasonably foreseeable that there will be an increase of more than 47 new single-family residences, and likely more by itself than the sixty (60) additional housing units the entire City is allotted through June 30, 2014 by the Southern California Association of Governments. Moreover, this statistic ignores the significant impact on population and housing that the Project will have on the local region, namely the Portuguese Bend area. Even an increase of 47 new single-family residences would represent a seventy-three percent (73%) increase in population and housing at the Project site. Therefore, the City needs to evaluate the potential significant environmental impacts of substantial growth in Portuguese Bend through an EIR.

VII. Transportation/Traffic

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on transportation and traffic. Again, this conclusion is largely based on the August MND’s impermissibly narrow scope of review. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole, which could result in more than 47 new single-family residences. Furthermore, this conclusion rests on the flawed premise that new construction will be done on a “piecemeal” basis “over a period of many

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years.” (August MND at p. 20.) Piecemeal development over a period of many years is precisely the kind of development that must be analyzed for cumulative impacts.

The August Mitigated Negative Declaration does not consider the local effects on Portuguese Bend of such a drastic increase in residences, which could amount to a 73% increase, or more, in traffic in the area. The roads in Portuguese Bend cannot withstand such a high increase in use. The Project site has already seen a large increase in traffic, which it cannot withstand, as a result of the nearby Terranea Resort development. As discussed above, the two (2) access roads leading into Portuguese Bend already traverse concededly unstable areas. The Portuguese Bend Community Association collects dues to support the maintenance of the roads at the Project site and it cannot bear the burden of maintaining the roads were usage to be increased by 73% or more.

Furthermore, as residents of Portuguese Bend can and will attest, the Project site clearly does not have adequate parking capacity, either for construction vehicles or additional residences. All roads at Portuguese Bend are fire roads wherein no parking is allowed, as fire trucks cannot negotiate the roads with either cars or construction vehicles parked on them. The lack of adequate parking, even for emergency vehicles, was underscored during the recent, August 2009, brush fires as emergency vehicles had difficulty negotiating the roads and residents were forced to direct excess traffic, such as news vehicles, away from the area because the Project site could not handle large volumes of traffic. Yet, the August MND wholly fails to address this significant impact. Instead, it misleadingly emphasizes in multiple places that “approval of the proposed project will not directly grant any entitlement to develop these lots,” notwithstanding the fact that the entitlements are a reasonably foreseeable effect of the Project and must be considered in the CEQA analysis.

VIII. Utilities/Service Systems

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on utilities and service systems, with mitigation. However, the August MND again unacceptably defers analysis and mitigation until a future date. (*See Sundstrom*, 202 Cal. App. 3d at 308-15.) Rather than fully analyzing the possible problems the new developments could cause on the sewer system and the possible measures to address it, the MND essentially provides that the “Public Works Department” will review and mitigate the problem at a future date. (August MND at p. 22.)

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For example, the August MND provides “[i]f the Director of Public Works determines that the sanitary sewer system cannot accommodate a new connection at the time of building permit issuance, the project shall be connected to a City-approved holding tank system until such time as the sanitary sewer system can accommodate the project.” (*Id.*) This is wholly unacceptable. The August MND indicates a possible significant environmental impact may exist with regard to the sewer system, yet does nothing more to analyze the issue or mitigate it. Instead, it defers analysis to the Director of Public Works at the time of permit issuance. This undermines the entire intent of the environmental review process, which must take into account the cumulative and reasonably foreseeable effects of a project before its approval. Review cannot be done on a piecemeal basis after the fact. Furthermore, such a holding tank system – the size, number and location of which are nowhere mentioned – will itself result in likely environmental impacts, yet the August MND doesn’t even discuss those impacts.

Additionally, the August MND does not consider the significant environmental impact of the construction required to connect the additional developments to the sewer system and/or holding tanks. However, an EIR must be prepared if a project will result in reasonably foreseeable indirect physical changes that may have a significant adverse effect on the environment. (*See County Sanitation Dist. No. 2 v. County of Kern*, 127 Cal. App. 4th 1544 (2005) (finding EIR was required for ordinance restricting disposal of sewage sludge because of indirect impacts, including need for alternative disposal, increased hauling, and possible loss of farmland in reaction to the new restrictions); *see also Heninger v. Board of Supervisors*, 186 Cal. App. 3d 601 (1986) (requiring EIR for ordinance allowing private sewage disposal systems because of possible groundwater degradation in case of system failure).)

Lastly, the fact that the City’s Public Works Department has “recently confirmed...that the Abalone Cove system does have adequate capacity to serve the *Monks* plaintiffs’ lots” (August MND at p. 22) is not evidence that the Project will not have a significant environmental impact as the Project must be considered in light of the potential development of all 47 lots and adjacent development proposed for the area, not merely the 16 *Monks* lots. Furthermore, the August MND provides no basis for this assertion from the City’s Public Works Department. Nor does it state what assumptions the City made to reach this conclusion, such as its assumptions regarding the size of the new developments and the number of bathrooms contained therein.

IX. Aesthetics

The August Mitigated Negative Declaration contends that the Landslide Revisions will have less than significant impacts on aesthetics, with mitigation. However, again, this analysis is

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based on an improperly narrow scope of review, one which only considers the effects of 16 lots, rather than the entire 47 lots. Furthermore, like the February MND, the August MND fails to consider the short-term construction impacts on Portuguese Bend. Although the August Mitigated Negative Declaration admits that the Landslide Revisions could lead to future development (although it disingenuously claims throughout that the Project will not directly grant any entitlements to develop the lots, despite the fact that said entitlements are a clearly foreseeable effect of the Project), its evaluation of the aesthetic impact of this development does not take into account the fact that during construction, grading activities would remove much of the vegetation on the site. Furthermore, stockpiled soils, equipment and building materials would be visible from off-site areas, thereby further degrading the aesthetic quality of the Project site and associated views, likely for the next 15-20 years.

The visual impacts of development at the Project site would be significant. Views for current residents of Portuguese Bend, as well as views for passersby, would change from undeveloped open space to a developed condition. This substantially degrades the existing visual character of the Project site and its surroundings. Yet, as a mitigation measure, the August Mitigated Negative Declaration provides only that the new residences "shall be subject to neighborhood compatibility analysis under the provisions of...[the City's] Municipal Code." (August MND at p. 6) This "mitigation" measure fails to consider other design criteria or guidelines, such as the Community Associations' Architectural Standards. Moreover, it does not mitigate the significant visual impact of development at the Project site replacing previously undeveloped open space.

Lastly, the August Mitigated Negative Declaration alleges the environmental impact caused by the additional lighting required for the new developments is "mitigated" because "[e]xterior illumination for new residents shall be subject to the provisions of...[the City's] Municipal Code." (August MND at p. 6.) However, the addition of 47 or more new residences would increase the light and glare in the Portuguese Bend community, which is semi-rural (August MND at p. 6), by 73% or more. The August MND fails to account for the significant impact the increased residences would have on the specific Project site.

In sum, we urge the City Council to reject the August Mitigated Negative Declaration. The August MND improperly narrows the scope of review and underestimates the effects of the Landslide Revisions. The City must consider the impact of the future development of all 47 currently undeveloped lots in Zone 2. There is substantial evidence the Project will have significant environmental impacts which are not addressed or are inadequately addressed in the August Mitigated Negative Declaration. The environmental issues at the Portuguese Bend area

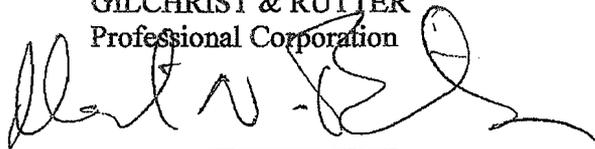
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are numerous and complex and a full-blown Environmental Impact Report is required. By failing to require an EIR, the City is endangering the environment of the Portuguese Bend area and putting the health and safety of its citizens at risk.

Please include this letter and attachments in the record of proceedings on this matter.

Very truly yours,

GILCHRIST & RUTTER
Professional Corporation



Martin N. Burton
Of the Firm

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Attachments

cc: Joel Rojas, Director of Planning, Building and Code Enforcement
Carolyn Lehr, City Manager
Carla Morreale, City Clerk
Yen N. Hope, Esq.

SEP 01 2009

PLANNING, BUILDING AND
CODE ENFORCEMENT

September 1, 2009

City Council
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

Re: Revised Proposed Mitigated Negative Declaration, Zone 2
State Clearinghouse No. 2009021050
Planning Case No. ZON2009-00007

Dear City Council Members:

We have reviewed the above referenced Mitigated Negative Declaration (MND). We own a lot within Zone 2, but were not party to the recent lawsuit. We are concerned that the City is proposing to separate out California Environmental Quality Act (CEQA) review of the sixteen "Monks Plaintiffs" lots from the remainder of the Zone 2 lots and, in addition, we have concerns with the adequacy of the public noticing for the project. Following are our comments and concerns in greater detail.

The City is proposing to separate out the lots of the "Monks plaintiffs" from the remainder of the Zone 2 lots for purposes of CEQA processing, processing the sixteen "plaintiff" lots as a MND while requiring an Environmental Impact Report for the balance of the Zone 2 lots. The initial MND circulated for public review included in its review and assessment all Zone 2 lots. The Revised MND limits its review only to the sixteen plaintiff lots.

The City, based on substantial geologic input over time, grouped these lots together as a single zone (Zone 2) based on their similarities. The current CEQA review process proposes to separate Zone 2 lots, not based on any factual, physical, or environmental distinctions but solely in response to the valid concerns of the recent court decision (Monks v. City of Rancho Palos Verdes). However, the court's decision does not relieve the City from applying all CEQA and other legally required standards to this matter. In the court's decision it found the City's prohibition of development of lots in Zone 2 to be a taking and impermissible impediment to development of the lots. With the exception of the numerical differences resulting from potential development of 16 lots versus 47, no changes to impacts resulting from the proposed limitation solely to the "plaintiffs lots" is introduced in the proposed revised MND. No basis for separating out the sixteen lots is given, except that these lots were part of a lawsuit against the City.

Without making a factual, physical, and/or environmental distinction between the sixteen lots of the "Monks plaintiffs" and all lots within Zone 2, the City leaves itself open to further legal challenge regarding development within Zone 2.

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Indeed, development of many of the "plaintiff" lots is more problematic than the "remainder" lots as many "plaintiff" lots abut significant open land. Potential future development of the "plaintiff" lots will introduce issues including biological impacts and fire safety that the "remainder lots" do not.

Although we fully recognize the City's need to respond in a timely fashion to the judge's decision with regard to the Zone 2 lawsuit, we question whether the current path is the most protective not only of the "Monk's plaintiff's" interest, but also the City's liability. We believe that if an Environmental Impact Report is appropriate for the "remainder" lots, it should also be required for the "Monks plaintiffs" lots. The City must respond to the court's decision, but it must also do what is most protective for all interested parties including current residents of the Portuguese Bend community, all owners of lots in Zone 2, and for the residents of the City in general. We believe that the lots of Zone 2 can be developed, but that any development of the area must be done in a careful and prudent manner. We urge the City not to take to separate CEQA paths for the lots in Zone 2.

In addition we have concerns with the public noticing for the subject project. The Public Notice for the project is dated August 10, 2009. The hearing date identified on the notice is September 1, 2009. As required by CEQA and as stated on the notice, public comments are accepted for a period of 30 days. The time lapse between the date of the notice and the hearing date does not allow for the required thirty day comment period.

Also with regard to the public noticing process required by CEQA, we question whether all Zone 2 lot owners received notice of the City's pending action. As mailing addresses of all lot owners are publicly available from the County Assessor's office, due diligence on the City's part would require that lot owners receive notice via U.S. Mail. Lot owners may or may not live within the area of a local newspaper of general circulation and so newspaper notice would not be effective. As this matter affects all lot owners in Zone 2, each lot owner should receive public notices, as they would have to be considered interested parties.

Thank you for the opportunity to comment.

Respectfully submitted,



Robert Bacon
30203 Via Rivera
Rancho Palos Verdes
90275



Margaret Vaughn
30203 Via Rivera
Rancho Palos Verdes
90275

Sept 1, 2009, RPV City Council Meeting

Mayor Clark and Councilmen Wolowicz, Long , Stern and Dyda:

My name is Robert Douglas and I live at 33 Sweetbay Road, RPV

I am the Chairman of the Board of Directors of the Abalone Cove Landslide Abatement District (ACLAD).

I speak to you tonight to urge the Council to undertake an EIR of all of Zones 2 and 3 and adjacent upslope portions of zone 1. These zones include the 47 undeveloped lots and other vacant lands that are likely targets for future development.

I urge this action for two reasons:

1. The key question is the stability of the ancient, inactive landslide complex, which includes all of the above zones.

How stable is the ancient landslide? In the Monks case, the courts answered the question by stating the stability was "uncertain" despite the numerous geotechnical investigations that span 40 years. The only definitive answer is provided by the Portuguese Bend landslide. Accidentally and inadvertently human activities triggered a reactivation of a portion of the ancient landslide complex in 1956 and as you are all aware, the movement has not stopped in over 50 years. Today the landslide is best characterized as a slow moving earth flow.

An EIR of the area should try to address the question of stability and in so doing may need to drill and instrument a series of boreholes in order to obtain answers to fundamental geological questions about the landslide complex. Without answers to these questions, the current "uncertainty" will prevail and lead to future challenges and lawsuits.

2. The second most important problem in the area is the management of storm water runoff. Storm water infiltrates and becomes groundwater and groundwater is the activator of landslide movement. Thus, the control of storm water runoff is directly linked to the stability question.

The last hydrological investigation of the Altamira watershed was done over 20 years ago and since then the methodology and science has changed. The Los Angeles County Flood Control agency, for example, uses different values for calculating 50 yr and 100 yr events and evaluating runoff volumes then it did in the past which in turn directly affects the size and location of storm drain culverts. The last study of the storm drain system within the Portuguese Bend community was done in the early 1990s and only about half of the recommended improvements made then were ever implemented. A complete analysis of the hydrology and storm drain system in the area should be a major part of the EIR.

In order to address these two topics, an EIR is needed of the entire area.

Finally, Lowell Wedemeyer and I have separately offered to the Council some written comments and suggestions aimed at improving the quality of the geotechnical reports and reducing the problems involved in evaluating the landslides. We hope that you will review these documents and would be happy to discuss them with you.

Thank you.

Kit Fox

From: yogesh goradia [y_goradia@hotmail.com]
Sent: Wednesday, September 09, 2009 11:12 AM
To: kitf@rpv.com
Subject: Zone 2 MND

I would like to reiterate my opposition to the proposed Mitigated Negative Declaration relative to the development in the Portugese Band area.

I see no rationale for the City to consider only the 16 Monk lots for issuing the MND; it should include the remaining 31 lots as well in the MND. There is no legal or engineering/safety basis for excluding the 31 lots. Excluding them from the MND would certainly invite more litigation from the owners of those 31 lots. I suggest that the City come prepared to present a rationale for their proposal in the upcoming hearing on the 15th or change their position as I have indicated.

Regards,

Yogesh Goradia

Resident of RPV for over 30 years
B.S. (civil eng.)
M.S. (structures)
M.S. (physics)
Ph.D. (Theoretical physics)