

RESOLUTION NO. 2009-72

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 15th day of September 2009.

/s/ Larry Clark
Mayor

Attest:

/s/ Carla Morreale
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. 2009-72 was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on September 15, 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>	Construction and Post-Construction	Prior to Building Permit final	Property owner	Department of Planning, Building and Code Enforcement
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>	Construction	Prior to Grading Permit issuance	Property owner	Department of Planning, Building and Code Enforcement
<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>	Construction	Prior to Grading Permit issuance	Property owner	Department of Planning, Building and Code Enforcement

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><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>	Construction	On-going	Property owner	Department of Planning, Building and Code Enforcement